

PROTECTING THE FREE EXCHANGE OF IDEAS ON COLLEGE CAMPUSES

HEARING BEFORE THE SUBCOMMITTEE ON OVERSIGHT OF THE COMMITTEE ON WAYS AND MEANS U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

MARCH 2, 2016

Serial No. 114–OS10

Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PUBLISHING OFFICE

22–161

WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON WAYS AND MEANS

KEVIN BRADY, Texas, *Chairman*

SAM JOHNSON, Texas	SANDER M. LEVIN, Michigan
DEVIN NUNES, California	CHARLES B. RANGEL, New York
PATRICK J. TIBERI, Ohio	JIM MCDERMOTT, Washington
DAVID G. REICHERT, Washington	JOHN LEWIS, Georgia
CHARLES W. BOUSTANY, JR., Louisiana	RICHARD E. NEAL, Massachusetts
PETER J. ROSKAM, Illinois	XAVIER BECERRA, California
TOM PRICE, Georgia	LLOYD DOGGETT, Texas
VERN BUCHANAN, Florida	MIKE THOMPSON, California
ADRIAN SMITH, Nebraska	JOHN B. LARSON, Connecticut
LYNN JENKINS, Kansas	EARL BLUMENAUER, Oregon
ERIK PAULSEN, Minnesota	RON KIND, Wisconsin
KENNY MARCHANT, Texas	BILL PASCRELL, JR., New Jersey
DIANE BLACK, Tennessee	JOSEPH CROWLEY, New York
TOM REED, New York	DANNY DAVIS, Illinois
TODD YOUNG, Indiana	LINDA SANCHEZ, California
MIKE KELLY, Pennsylvania	
JIM RENACCI, Ohio	
PAT MEEHAN, Pennsylvania	
KRISTI NOEM, South Dakota	
GEORGE HOLDING, North Carolina	
JASON SMITH, Missouri	
ROBERT J. DOLD, Illinois	
TOM RICE, South Carolina	

DAVID STEWART, *Staff Director*

NICK GWYN, *Minority Chief of Staff*

SUBCOMMITTEE ON OVERSIGHT

PETER J. ROSKAM, Illinois, *Chairman*

PAT MEEHAN, Pennsylvania	JOHN LEWIS, Georgia
GEORGE HOLDING, North Carolina	JOSEPH CROWLEY, New York
JASON SMITH, Missouri	CHARLES B. RANGEL, New York
TOM REED, New York	DANNY DAVIS, Illinois
TOM RICE, South Carolina	
KENNY MARCHANT, Texas	

CONTENTS

	Page
Advisory of March 2, 2016 announcing the hearing	2
WITNESSES	
Alexander Atkins, Law Student, Georgetown University	10
Robert P. George, McCormick Professor of Jurisprudence, Princeton University, and Visiting Professor of Law at Harvard University	87
Frances R. Hill, Professor of Law and Dean's Distinguished Scholar for the Profession, University of Miami School of Law	116
Catherine Sevchenko, Director of Litigation, Foundation for Individual Rights in Education	40
Joshua Zuckerman, Student, Princeton University, and Founding Member of the Princeton Open Campus Coalition	67
SUBMISSIONS FOR THE RECORD	
Alliance Defending Freedom (ADF)	172
Christian Legal Society (CLS)	176
Charles Michelsen	186
Cru	188
Doug Weber	197
Justin P. Gunter	199
Michael Berry	204
Mitchell Steffen	213
ReJOYce In Jesus Campus Fellowship (RJCF)	216
Young America's Foundation (YAF)	226

PROTECTING THE FREE EXCHANGE OF IDEAS ON COLLEGE CAMPUSES

WEDNESDAY, MARCH 2, 2016

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON OVERSIGHT,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:04 a.m., in Room 1100, Longworth House Office Building, Hon. Peter Roskam [Chairman of the Subcommittee] presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE
Wednesday, February 24, 2016
No. OS-10

CONTACT: (202) 225-3625

Chairman Roskam Announces Hearing on Protecting the Free Exchange of Ideas on College Campuses

NEW LOCATION

All other details remain unchanged

House Ways and Means Oversight Subcommittee Chairman Peter Roskam (R-IL), today announced that the Subcommittee will hold a hearing on “Protecting the Free Exchange of Ideas on College Campuses” **on Wednesday, March 2, 2016, in Room 1100 of the Longworth House Office Building, beginning at 10:00 a.m.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to make a submission, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the on-line instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, March 16, 2016.** For questions, or if you encounter technical problems, please call (202) 225-3625 or (202) 225-9263.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and

fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

3. Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TDD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available online at <http://www.waysandmeans.house.gov/>.

Chairman ROSKAM. The Subcommittee will come to order. Welcome to the Ways and Means Subcommittee on Oversight, our hearing on protecting the free exchange of ideas on college campuses.

Today we are going to examine how tax-exempt colleges and universities are suppressing the free exchange of ideas on campus. And specifically, we are going to focus on prohibitions on student use of campus resources for political activity, the adoption of restrictive speech codes, and incidents when administrators or students have silenced other students for seeking to exchange—engage in the exchange of opposing ideas.

Every single year American taxpayers give colleges and universities billions of dollars worth of tax breaks. And, as a Nation, we believe education is an extremely valuable public good. But is this bargain truly benefitting the American taxpayers or the students, when colleges suppress speech on campus?

Most colleges and universities, both public and private, are either tax-exempt organizations themselves under 501(c)(3) of the Internal Revenue Code, or they have separate endowments that are (c)(3)s. And under these provisions of tax law, the taxpayers give financial benefits to schools based on the educational value that they offer to our society.

When colleges and universities suppress speech, however, we have to question whether that educational mission is really being fulfilled. Almost all institutions of higher education explicitly pledge their support for unfettered academic exploration and freedom of expression in their advertising and school policies. But every day we learn of new ways that these schools are shutting down the marketplace of ideas on campus.

Schools enact speech codes to stop teasing, and require the reporting of micro-aggressions. Students shout down speakers because they disagree with the ideas they are hearing presented. Colleges force students who want to advocate for a particular position to do so only while standing in a tiny, designated free-speech zone, often the campus boondocks, and only if they have made an advance reservation days or weeks prior.

One situation that has caught this Subcommittee's attention was the case of one of our witnesses. When Alexander Atkins wanted to pass out political campaign flyers on his campus at Georgetown Law, the administration shut him down, arguing that his political

speech could affect the school's 501(c)(3) status. But Mr. Atkins' persistence has paid off; Georgetown is currently working to revise its policies.

And by unanimous consent I will enter into the record the letter that Georgetown sent to Ranking Member Lewis and me, acknowledging the faults of their previous free speech policies, and outlining steps they are taking to reform them so students like Alex, regardless of their points of view, can discuss issues important to them, debate the views they disagree with, and fully participate in the learning process we expect at our colleges and universities, not only allowing, but encouraging students to compare, reason, discuss, and debate ideas in the search for truth.

[The submission of The Honorable Peter Roskam follows:]



GEORGETOWN UNIVERSITY

February 29, 2016

Office of Federal Relations

The Honorable Peter J. Roskam
Chair
Ways and Means Oversight Subcommittee
U. S. House of Representatives
Washington, DC 20515

The Honorable John Lewis
Ranking Member
Ways and Means Oversight Subcommittee
U. S. House of Representatives
Washington, DC 20515

Re: March 2 Subcommittee Hearing on "Protecting the Free Exchange of Ideas on College Campuses"

Dear Chairman Roskam and Ranking Member Lewis:

I am writing with regard to the Subcommittee's hearing on "Protecting the Free Exchange of Ideas on College Campuses." The Subcommittee's announcement states that it will "us[e] a recent Georgetown Law incident as a case study [in which] Georgetown Law recently prohibited law student Alex Atkins from distributing information to support a Presidential candidate on campus, arguing that political activity by students on campus would threaten its tax-exempt status." I am writing to share with you and your Subcommittee members some information about political speech here at Georgetown University and some insight into the situation you are exploring and the work we are doing related to it here on our campus.

Georgetown is an institution that cherishes free speech and open and lively debate on all manner of topics. Students are encouraged to express their views, and do so routinely all across our campuses both inside and outside of the classroom. With our Washington, DC location, and academic strengths in public policy, government, foreign service and law, we have a particular orientation toward public service and engagement in the political process, and have a long history of educating students of all ideological and political perspectives and working with them to express their ideas and advocate for causes they care about.

We host numerous political speakers who represent a range of perspectives, including elected officials, high level appointees and candidates for public office. In the last several Presidential election cycles, we have invited all candidates to speak at Georgetown and many, including most recently Senator Bernie Sanders last November, have accepted our invitation. For your information, I am attaching a document that lists political and public sector speakers who have spoken on our campus over the last year. I would note that, coincidentally, this week alone, my office is working with the College Democrats to host Congresswoman Grace Meng (D-NY) and with our chapter of Young Americans for Liberty and the College Republicans to host Congressman Mick Mulvaney (R-SC). While these individuals are coming to speak in their official capacities as Members of Congress and not as representatives of candidates for office, the discussion at their appearances, including the "Q&As" will doubtless allow students to engage

with them on a variety of political topics that are being debated in the current Presidential campaign. These types of exchanges embody the spirit of this University and our success in engaging students in the important issues of the day.

The Law Center did not accept Law Center student Alex Atkins' request for space to engage in campaign activity because our policies (1) focused on organized student groups and at the time did not allow individual students to reserve space for organized activities on campus, and (2) contained an overly cautious interpretation of the legal requirements governing the use of University resources under Section 501(c)(3) of the Internal Revenue Code. We are adjusting the policies to make very clear that individuals as well as groups are able to reserve tables for organized activity and that all members of our community are able to make reasonable use of University resources to express their political opinions.

To manage the use of its constrained space, the Law Center's policy for reserving tables focused on providing opportunities for officially recognized student organizations (including, of course, our Georgetown Law Republicans and Georgetown Law Democrats), but did not provide such opportunities for individual students. While this policy has previously served the community well, Mr. Atkins' recent experience highlighted the need to adjust this policy to ensure that not only groups but also individuals can express their views in an organized way.

As your Committee knows, non-profit institutions of higher education must comply with Section 501(c)(3) of the Internal Revenue Code, which imposes restrictions on their engagement in partisan political campaign activity, and on the use of university resources in support of such activity. To ensure that students can engage in the political process without having the University run afoul of its legal obligations, the Law Center has established guidelines regarding partisan political activity on campus. The policy encourages students to express their political views and to participate in the political process, while clarifying that they cannot speak for Georgetown or use Georgetown resources in a manner that could imply that Georgetown itself is speaking or endorsing their viewpoints. While the majority of the policy has appropriately enabled speech while protecting the University, Mr. Atkins' request led the Law Center to realize that its understanding of the 501(c)(3) restrictions on the use of Law Center resources for student campaign activity was overly narrow. The Law Center is therefore adjusting its policy to allow students to make appropriate use of University resources as they engage in partisan political activities on campus.

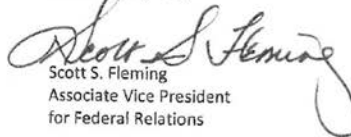
Georgetown University Law Center's updated policies will reiterate that all members of the Georgetown Law School community have the right to express themselves as they wish in a non-disruptive manner on campus inside or outside of the classroom. They will also specifically address the issue that occasioned this hearing and provide student organizations, ad hoc groups and individual students with access to space for political or other advocacy, including partisan campaigning.

This work began prior to the announcement of your hearing and is moving forward expeditiously, particularly in light of the political season that is well underway. We expect to have the updated policies, which are currently being reviewed by students, faculty and staff, in place shortly. Mr. Atkins is fully aware of this work.

Thank you for the opportunity to share this context, and I hope it will be helpful as you explore these issues in the Subcommittee. We share the goal of ensuring that our students, faculty and staff can freely engage in political and public policy debates and express their views through participation in

political campaign activity, while being careful not to have the University itself engage in partisan political activity that would run afoul of 501(c)(3) of the Internal Revenue Code.

With best regards,


Scott S. Fleming
Associate Vice President
for Federal Relations

CC: Members of the Subcommittee

Chairman ROSKAM. Along the way, we hope this educational environment will help students build character, hone their values, and strengthen virtues like compassion, maturity, and understanding. And in a word, we hope that colleges shape our young adults into the kind of positively contributing members of society who are equipped with the skills they will need to achieve their potential.

Unfortunately, many other schools continue to use their 501(c)(3) status to stifle political speech on campus, especially during election years. Let's get something straight: Section 501(c)(3) does not require schools to prohibit student political activity on campus.

In 2010 the late Supreme Court Justice Antonin Scalia gave the commencement address at his granddaughter's high school, and he told the graduates that, "More important than your obligation to follow your conscience, or at least prior to it, is your obligation to form your conscience correctly." For students to form their consciences correctly, they have to be exposed to a wide variety of competing ideas. And some of these ideas might be uncomfortable, unpopular, or offensive.

But education requires that students learn both to challenge others' ideas, and how to form and defend their own. Even here, in today's hearing, I am sure we will hear testimony that challenges the status quo and may even make us uncomfortable. But in the same way that challenging conversations are not a threat to education, they are not a threat to democracy. And, in fact, our willingness to engage in challenging conversations is the very foundation of both.

Personally, I have an interest in these issues over the years because today I have heard from conservative students and faculty who were prohibited, shut down, or even fired for trying to express their support for the sanctity of life, their concerns about immigration or Planned Parenthood or defense of Israel, or their view that the government needs to stick more closely to the guidance of the Constitution.

I suspect that some colleagues on the other side of the dais are concerned about situations where students and staff have had their speech stifled on a different set of views. But my hope is that we can all agree that whatever one's particular views are, the American ideal supports and is founded upon the principle that we may each express our opinions freely. There is perhaps no institution where this is more valuable than the American college campus, where young minds are learning, growing, and maturing.

I would now like to recognize Ranking Member Lewis for his opening statement.

Mr. LEWIS. Good morning, Mr. Chairman. Good morning. Welcome.

Mr. Chairman, I do not understand why we are here. The Ways and Means Oversight Subcommittee does not have jurisdiction over future legislation, over freedom of speech, or college curriculum or school resources.

On Monday the Chair and I both received a letter from Georgetown University. In the letter Georgetown explained that it will revise its policy so that students like Mr. Atkins may engage in certain campaign activity on campus without jeopardizing the tax-

exempt status of Georgetown. This hearing focuses on a soon-to-be resolved issue, and the Oversight Subcommittee does not have jurisdiction over the decade-long argument that certain colleges, their faculties, or their students are biased toward either conservative or liberal thought.

Some of today's witness testimony is better suited for the Education and Workforce Committee or the House Judiciary Committee, which held nearly an identical hearing on the same issue—subject last June.

What are we doing here? What is the purpose of this hearing? I will tell you what this hearing is not. It is not in the tradition of the Subcommittee. The witnesses should remember that our Subcommittee jurisdiction does not extend to proposed changes to the Tax Code. This is a matter for the Full Committee or the Tax Policy Subcommittee. Consequently, I am requesting each and every witness directly address how their testimony relates to a requirement of the current Internal Revenue Code.

I look forward to hearing the testimony from the democratic witness, Professor Frances Hill. She is a nationally-recognized expert in tax-exempt law from the University of Miami. Dr. Hill will explain the political campaign activity rules that apply to section 501(c)(3) organizations, and she will detail why getting those rules right is a key concern for colleges and universities.

Finally, let me state what falls currently squarely within our Subcommittee power: Taxpayers' rights. Last July the Oversight Subcommittee Majority called on the IRS to put taxpayers first. But to date there has been no Subcommittee action, no hearing, and no progress.

Yesterday morning, Nina Olson, the national taxpayer advocate, was on *CSPAN*. She took call after call from Americans who are frustrated with taxpayer services. We could have held our first hearing on the purpose of the current tax filing—I should say on the progress of the current tax filing season, or the impact of several years of significant budget cuts on IRS services, or on the rising threat by fraud and cyber attacks on our tax system.

Instead, we are here for an issue that is not in this Subcommittee's power or jurisdiction, and blatantly ignoring the needs, the rights, and concerns of American taxpayers. The Subcommittee Democrats are ready to roll up our sleeves and do the people's work without politics and partisanship.

Let me be clear. We have plenty of work to do, and this is not it. So, Mr. Chairman, on that note, I yield back the balance of my time.

Chairman ROSKAM. Thank you, Mr. Lewis. In quick answer to your question, we are here because of the fact that, look, American colleges are using 501(c)(3) as an excuse to stifle speech. That is the first reason. The second reason is we have jurisdiction here because of all activities under the Ways and Means Committee. The American taxpayer, through tax-exempt status, subsidizes this activity, and it is a reasonable thing that we follow up on it. And finally, we will be doing many inquiries as it relates to the Internal Revenue Service.

So, today's witness panel includes five individuals who will offer us insight about their own experiences advocating for free expression on campus in this area.

Alexander Atkins, who I mentioned in my opening statement, is a law student at Georgetown University Law Center, and an advocate for Senator Bernie Sanders' Presidential campaign.

Catherine Sevchenko is Director of Litigation at the Foundation for Individual Rights in Education.

Joshua Zuckerman is a senior at Princeton University and a founding member of the Princeton Open Campus Coalition.

Robert George is the McCormick Professor of Jurisprudence at Princeton University, a Visiting Professor of Law at Harvard University, and an advisor to the Princeton Open Campus Coalition. He is also Chairman of the U.S. Commission on International Religious Freedom, although he will not be testifying in that capacity today.

And Frances Hill is a Professor of Law and Dean's Distinguished Scholar for the Profession at the University of Miami School of Law.

The Subcommittee has already received your written testimony. You will each be recognized for 5 minutes. The lights are green, yellow, and red. And if you could stick closely to that, we would appreciate it.

Mr. Atkins, you are recognized for 5 minutes.

**STATEMENT OF ALEXANDER ATKINS,
LAW STUDENT, GEORGETOWN UNIVERSITY**

Mr. ATKINS. Good morning, Chairman Roskam, Ranking Member Lewis, and honorable Members of the Subcommittee. My name is Alex Atkins, and I am a second-year student at Georgetown University Law Center. I am also a member of a group of law center students that supports Senator Bernie Sanders' campaign for President.

As you are likely aware, a law student's free time is a rare commodity, so our group's goals are fairly modest. We want to share our enthusiasm for Sanders' campaign, and encourage our peers to participate in the election. But rather than achieving these objectives, our group has spent nearly 6 months struggling to engage in basic civic expression.

In September 2015, at the start of the school year, our group's goal was simply to establish our presence on the campus. So we decided to reserve a table where other student groups commonly reserve space to engage in outreach. But Georgetown's office of student life denied our group's reservation on the grounds that we were requesting the table in support of a specific candidate. That same week I received a campuswide email that recognized increased political engagement surrounding the 2016 election, and explained that Georgetown Law is a tax-exempt organization and was subject to limitations on the use of its resources for partisan political campaign activities.

But rather than explaining what these limitations were, the email advised students to consult with the university's Office of Federal Relations. I emailed the office that day, but I never received a response.

Many of us chose Georgetown Law for its presence in the Nation's capital, and the presumption of heightened opportunities for political engagement. But with no apparent channel for our intended outreach, our group resorted to unofficially tabling in the school's cafeteria. Despite the less-than-ideal location, students were excited to connect with fellow Sanders supporters, and appreciated receiving information on voting in their home States.

October 13th was the first democratic debate, an ideal opportunity to amplify our message. It was a beautiful day, so we decided to table outside, and we enjoyed friendly interactions with our fellow students, while encouraging them to attend a debate-watching event. But within an hour, an Office of Student Life representative came and told us that we were violating the school's policy, and were required to stop. We were disappointed, but we were mostly frustrated that the representative was unable to clarify precisely what the policy was, or how we could permissibly engage in this valuable expression.

When I sought additional clarity in early November, I was directed to Georgetown's student organization policy on partisan political activities. The policy begins optimistically, explaining that students are free to express their individual and collective political views. However, the policy sharply qualifies that statement by mandating that students may not use university-supported resources to do so, including space on campus. The only explanation for the policy's contradictory approach is its reference to the Internal Revenue Code. Citing section 501(c)(3), the policy states that Georgetown must restrict the use of university resources.

Our group was shocked by the policy's implications for student political expression, and we questioned the legitimacy of its rationale. Other students I spoke with reacted with nearly unanimous confusion. "Why would the school not want you to do that," they asked. "Isn't that what college campuses are for?"

When I explained that Georgetown's policy seemed to be rooted in concerns about losing its tax exemption, many students seemed to share my own growing skepticism. Would the IRS really penalize Georgetown for allowing its students to engage in free expression? The budding lawyer in me wanted an answer.

My efforts to determine what 501(c)(3) actually required led me to contact FIRE. A conversation with one of FIRE's attorneys confirmed that Georgetown's policy was far stricter than necessary, and FIRE offered to write a letter on our group's behalf.

We were relieved to finally have an ally, but we wanted to resolve the conflict ourselves. In early December we wrote to the dean of the law center and the dean of students. We explained our predicament, and sought an arrangement that could accommodate both the university's interests and our own. But after waiting more than a month without a response, our group decided to accept FIRE's offer.

The letter FIRE wrote, and the media attention that it created, has motivated Georgetown to begin revising its policies to permit certain partisan activities. This is an undeniably positive step, and I am thankful to be included in the process. However, these changes cannot undo the nearly 6 months that we have lost, 6 months when all we wanted to do was engage in the type of basic

civic expression long considered emblematic of America's educational campuses.

Colleges and universities across the country need to be reminded of their obligation not just to permit but to protect the vital free exchange of ideas. Thank you.

[The prepared statement of Mr. Atkins follows:]

WRITTEN TESTIMONY of ALEXANDER ATKINS

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”

February 29, 2016

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

I write you today to supplement the testimony I will give at the March 2, 2016 hearing on "Protecting the Free Exchange of Ideas on College Campuses." Thank you for the opportunity to share my thoughts and experiences.

My name is Alexander Atkins, and I am a second year student at Georgetown University Law Center. I am also a member of a group of Law Center students that supports United States Senator Bernie Sanders's campaign for President.

As you are likely aware, a law student's extracurricular time is a rare commodity, so our group's goals are fairly modest. We want to share our enthusiasm for Sanders's campaign and encourage our peers to participate in the election. But rather than achieving these unassuming goals, our group has spent nearly six months struggling just to engage in basic civic expression.

Our group was formed in September 2015, at the start of the school year. Our initial goal was simply to establish our presence on campus, so we decided to reserve a table outside of the main cafeteria, where other student groups commonly reserve space to engage in outreach. As we were planning this first activity, I received a campus-wide email entitled, "University Guidance on Political Campaign Activity and Lobbying."¹ The email recognized the increased political engagement surrounding the 2016 election, and explained that "the University, as a tax-exempt organization, . . . is subject to limitations on the use of its resources for partisan political campaign activities."² Rather than specifying what these limitations were, the email advised students who were interested in such activities to consult with the University's Office of Federal Relations.³ I emailed the office that day,⁴ but I never received a response.

The following week, I submitted a Tabling Request Form to the Office of Student Life.⁵ The Office denied the request because our group was "requesting to table . . . in support of a specific candidate," and the Office directed me to the same campus-wide email about political campaign activity.⁶

Our group was eager to begin the outreach efforts that we had planned nearly a month earlier. Many of us chose Georgetown Law, in part, for its presence in the Nation's

¹ See Attachment #1.

² See *id.*

³ See *id.*

⁴ See Attachment #2.

⁵ See Attachment #3.

⁶ See Attachment #4.

capital and the presumption of heightened opportunities to engage in the political process. With no apparent channel for our intended expression, on two occasions in late September, we resorted to tabling in unreservable areas of the cafeteria. Despite the less than ideal location, many students stopped to speak with us. They were excited to connect with fellow Sanders supporters, and they appreciated receiving information on voting in their home states.

October 13th was the first Democratic debate—an ideal opportunity to amplify our message and achieve greater student engagement. It was a beautiful day, so we decided to table outside the entrance to the campus's main academic building. While representing our chosen candidate, we enjoyed friendly interactions with our fellow students and encouraged them to attend an off-campus debate-watching event. But within an hour, a representative of the Office of Student Life came outside and told us that we were violating the School's policy and that we were required to stop. We were disappointed, but we were mostly frustrated that the representative was unable to clarify precisely what the policy was or how we could permissibly engage in this valuable expression.

In early November, I emailed the Office of Student Life seeking additional clarity.⁷ The Office responded promptly⁸ and directed me to Georgetown Law's "Student Organization Policy on Partisan Political Activities."⁹ The Policy begins optimistically, explaining that "[s]tudents . . . are encouraged to participate in the political process and are free to express their individual and collective political views."¹⁰ However, the Policy sharply qualifies that statement by mandating that students "may not use University-supported resources, including space on campus, . . . for partisan political campaign activity."¹¹

The Policy's contradictory approach can only be explained by its reference to the Internal Revenue Code: "As a non-profit institution of higher education whose activities are regulated in part by Section 501(c)(3)[,]" Georgetown Law "must generally avoid engaging in partisan political campaign activity and must restrict the use of University resources in support of such activity."¹²

Our group was shocked by the Policy's implications for students' political expression, and we questioned the legitimacy of its rationale. Notably, when we attempted to partner with recognized student groups, they expressed their own uncertain apprehensions about violating the Policy. Meanwhile, other students I spoke with reacted with nearly unanimous confusion.

"Why would the school not want you to do that?" they asked. "Isn't that what college campuses are for?"

⁷ See Attachment #5.

⁸ See Attachment #6.

⁹ See Attachment #7.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

When I explained that Georgetown's Policy seemed to be rooted in concerns about losing its tax exemption, many students seemed to share my own growing skepticism. Could it really be true that the IRS would penalize Georgetown for allowing its students to engage in free expression? The budding lawyer in me wanted an answer.

In a final email to the Office of Student Life, I inquired as to who had drafted the Policy and whether the Policy's primary rationale was indeed to avoid violation of 501(c)(3).¹³ I was advised that concerns about jeopardizing the University's tax status were "at least part of the rationale," but that, because the Policy had been developed by the Office of Federal Relations, the Office of Student Life "[couldn't] speculate as to what other rationales support[ed] the policy."¹⁴

My efforts to determine the actual requirements of 501(c)(3) led me to contact the Foundation for Individual Rights in Education (FIRE). An informative conversation with one of FIRE's attorneys confirmed what I had already suspected—that Georgetown's Policy was far stricter than necessary. FIRE offered to write a letter to Georgetown on our group's behalf. Although our group was relieved to finally have an ally, we were determined to make one final effort to resolve the conflict ourselves. In early December, members of our group wrote directly to the Dean of the Law Center and the Dean of Students.¹⁵ We explained our predicament, sought clarity on the school's policies, and hoped that we might reach an arrangement that could accommodate both the University's interests and our own.¹⁶ After waiting more than a month without receiving a response, our group decided to accept FIRE's offer.

FIRE's letter—and the media attention it created—has motivated Georgetown University Law Center to acknowledge the unmet needs of its students. The Law Center is now revising its policies to permit certain partisan activities. This is an undeniably positive step, and I am thankful to be included in the process. However, these changes cannot undo the nearly six months we lost—six months when all we wanted was to engage in basic civic expression long considered emblematic of America's educational campuses. Georgetown Law is just one example of a much broader problem. Colleges and universities across the country need to be reminded of their obligation, not just to permit, but to protect the vital free exchange of ideas.

Thank you again for the opportunity to share my thoughts and experiences.

Alexander Atkins
alexander.atkins@mac.com

¹³ See Attachment #8.

¹⁴ See Attachment #9.

¹⁵ See Attachment #10.

¹⁶ See *id.*

ATTACHMENT #1

From: Campus Broadcast [REDACTED]
 Subject: University Guidance on Political Campaign Activity and Lobbying
 Date: September 11, 2015 at 4:21 PM
 To: Campus Broadcast [REDACTED]



As the academic year gets underway, we wanted to remind you of the rules that apply to the University's engagement in political campaign activity and lobbying. The University encourages its students, faculty and staff to engage in the political process and in issue or cause advocacy in their personal capacities, and certain limited political activities and lobbying are permissible on campus. It is important for members of our community to understand, however, that there are restrictions and requirements relating to political activity and lobbying by the University or utilizing University resources. **If you are considering engaging in political campaign activity or lobbying activities in your University capacity, or in ways that involve University resources or could appear to be on behalf of the University, you should pay careful attention to the following information and contact the Office of Federal Relations for guidance.**

Political Campaign Activity

The 2016 political campaign is already dominating the news, and the presidential and other elections are sure to draw more and more attention. While individuals, of course, may support candidates of their choice, the University, as a tax-exempt organization, is prohibited from supporting or opposing candidates for political office and is subject to limitations on the use of its resources for partisan political campaign activities. Members of the University community, including student groups, who wish to engage in political campaign activities in their University capacity or in ways that use University resources should consult with the Office of Federal Relations in advance for guidance. Many political activities can be conducted on campus, but it is important that activities be planned and structured in ways that meet requirements. More detailed information is available at: <http://federalrelations.georgetown.edu/news/lobbying>.

Lobbying

Although we typically think of lobbying as an attempt to influence specific legislation, it encompasses a broad range of communications with various federal officials and also activity that helps to prepare others to make such communications. Georgetown is represented by a registered federal lobbyist (Scott Fleming), and as a result must observe lobbying rules and reporting requirements. There is a cap on the amount of lobbying the University can engage in and we must file quarterly lobbying reports that report on all lobbying activity that has been undertaken on behalf of the University, include a calculation of the dollar value of University resources devoted to lobbying activities, and list the topics on which lobbying has occurred. Keeping track of all lobbying activity is an important, legally-required, responsibility of the Office of Federal Relations. Before you engage in any lobbying activity that involves members of the University community or utilizes University resources (or if you have questions about whether a planned activity may constitute lobbying), you should contact the Office of Federal Relations.

Finally, it is also important to note that Congressional gift rules generally prohibit members of the University community from offering or providing anything of value to a Member of Congress or a Congressional staff person. Federal agencies also have their own gift rules. There are a series of exceptions to these rules, including for widely attended events, certain educational events, and a carefully defined personal friendship exception, but it is best to check with the Office of Federal

Relations to determine how these rules apply to a particular circumstance.

Thank you for your attention to this information. Please contact us if you have questions either at federalrelations@georgetown.edu or by phone to [202-687-3455](tel:202-687-3455).

With best regards

Christopher Murphy
Vice President
for Government Relations
and Community Affairs

Scott S. Fleming
Associate Vice President
for Federal Relations

James E. Ward
Associate Vice President
for Compliance and Ethics

ATTACHMENT #2

From: **Alexander Atkins** [REDACTED]
Subject: Law Student Political Activity
Date: September 11, 2015 at 4:58 PM
To: federalrelations@georgetown.edu



Greetings,

I am part of an unofficial law student group in support of Bernie Sanders' run for President. I want to make sure that we are able to engage in meaningful extracurricular activities while comporting with the University's policies. Please let me know who/when I can call to discuss these issues.

Thank you,

Alex Atkins

Alexander Atkins
[REDACTED]
Juris Doctor Candidate
Georgetown University Law Center

Staff Member
Georgetown Law Journal

Resident Fellow
Gewirz Student Center

ATTACHMENT #3

From: Alexander Atkins [REDACTED]
 Subject: Tabling Request
 Date: September 14, 2015 at 8:36 AM
 To: Office of Student Life studentlife@law.georgetown.edu



Tabling request attached.

Thank you!

Name: Alexander Atkins		Date Request Submitted: 09/14/2015	
Dept/Org: GULC Students for Bernie Sanders		GULC Email: [REDACTED]	
Telephone Number: (914) 318-2256			
Purpose of Request: Raising awareness and providing voter registration			
Will food or beverages be served? NO		Will money be exchanged? NO	
Food and Beverage Advisory: Requestor is responsible for insuring that the area is in good condition after occupancy. Please contact Facilities Management at (202) 662-9350 if extra trash cans or additional services are needed.			
For Audio Visual Assistance, please contact A/V directly at (202) 662-9026.			
All requests should be considered tentative until confirmation is received. The following policies and regulations govern table usage and rental at Georgetown University Law Center. The guidelines require users to abide by all Law Center regulations. In addition, table usage must be consistent with the academic mission and standards of Georgetown University Law Center:			
<ul style="list-style-type: none"> • All requesters must complete a Table Request Form. • A maximum of 2 tables may be reserved at any given time by one organization/group. • All users may tack signs on the bulletin board on the wall of the chapel area behind their table. Signs must be removed when the usage period has ended. No signs are to be placed on the doors of the chapel. • Entrances to the chapel may not be obstructed. • Only internal groups may use tables on Wednesdays. • Tables are for internal use, Law Center related sales, and sales of law related materials. • Tables are not available for individual use. 			
I HAVE READ AND UNDERSTAND ALL THE ABOVE REGULATIONS.			
SIGNATURE: Alexander Franklin Atkins			
Date(s) of Use	Time (From - To) A.M. or P.M.	Number of Tables Requested (Max. 2)	Table(s) Assigned <small>(to be completed by Student Life staff)</small>
Tues, 9/15	12p-3p & 5p-7p	1	
Thurs, 9/17	12p-3p & 5p-7p	1	
You may submit your request electronically to studentlife@law.georgetown.edu, in person, or by fax to (202) 662-9261.			
Assigned by:	Date Completed:	Tracking #:	
GEORGETOWN UNIVERSITY LAW CENTER AJH		REVISED 10/07-	

ATTACHMENT #4

From: Office of Student Life studentlife@law.georgetown.edu
 Subject: FW: University Guidance on Political Campaign Activity and Lobbying
 Date: September 15, 2015 at 9:24 AM
 To: Alexander Atkins(fwd) [REDACTED]



Hi Alex,

Unfortunately, we cannot approve your request to table since you are requesting to table on behalf/in support of a specific candidate. Please see the University's policies below.

Best,

OSL

 The Office of Student Life | GEORGETOWN LAW
studentlife@law.georgetown.edu | McDonough 170 & 171
 Office: 202.662.9292 | Fax: 202.662.9261
[Website](#) | [Facebook](#) | [Twitter](#) | [OrgSync](#)

From: Office of Federal Relations [<mailto:announcements@georgetown.edu>]
 Sent: Friday, September 11, 2015 3:45 PM
 To: bls35@georgetown.edu
 Subject: University Guidance on Political Campaign Activity and Lobbying

As the academic year gets underway, we wanted to remind you of the rules that apply to the University's engagement in political campaign activity and lobbying. The University encourages its students, faculty and staff to engage in the political process and in issue or cause advocacy in their personal capacities, and certain limited political activities and lobbying are permissible on campus. It is important for members of our community to understand, however, that there are restrictions and requirements relating to political activity and lobbying by the University or utilizing University resources. **If you are considering engaging in political campaign activity or lobbying activities in your University capacity, or in ways that involve University resources or could appear to be on behalf of the University, you should pay careful attention to the following information and contact the Office of Federal Relations for guidance.**

Political Campaign Activity

The 2016 political campaign is already dominating the news, and the presidential and other elections are sure to draw more and more attention. While individuals, of course, may support candidates of their choice, the University, as a tax-exempt organization, is prohibited from supporting or opposing candidates for political office and is subject to limitations on the use of its resources for partisan political campaign activities. Members of the University community, including student groups, who wish to engage in political campaign activities in their University capacity or in ways that use University resources should consult with the Office of Federal Relations in advance for guidance. Many political activities can be conducted on campus, but it is important that activities be planned and structured in ways that meet requirements. More detailed information is available at: <http://federalrelations.georgetown.edu/news/lobbying>

Information is available at: <http://www.georgetown.edu/essays/federalrelations/lobbying.htm>

Lobbying

Although we typically think of lobbying as an attempt to influence specific legislation, it encompasses a broad range of communications with various federal officials and also activity that helps to prepare others to make such communications. Georgetown is represented by a registered federal lobbyist (Scott Fleming), and as a result must observe lobbying rules and reporting requirements. There is a cap on the amount of lobbying the University can engage in and we must file quarterly lobbying reports that report on all lobbying activity that has been undertaken on behalf of the University, include a calculation of the dollar value of University resources devoted to lobbying activities, and list the topics on which lobbying has occurred. Keeping track of all lobbying activity is an important, legally-required, responsibility of the Office of Federal Relations. Before you engage in any lobbying activity that involves members of the University community or utilizes University resources (or if you have questions about whether a planned activity may constitute lobbying), you should contact the Office of Federal Relations.

Finally, it is also important to note that Congressional gift rules generally prohibit members of the University community from offering or providing anything of value to a Member of Congress or a Congressional staff person. Federal agencies also have their own gift rules. There are a series of exceptions to these rules, including for widely attended events, certain educational events, and a carefully defined personal friendship exception, but it is best to check with the Office of Federal Relations to determine how these rules apply to a particular circumstance.

Thank you for your attention to this information. Please contact us if you have questions either at federalrelations@georgetown.edu or by phone to 202-687-3455.

With best regards

Christopher Murphy
Vice President
for Government Relations
and Community Affairs

Scott S. Fleming
Associate Vice President
for Federal Relations

James E. Ward
Associate Vice President
for Compliance and Ethics

ATTACHMENT #5

From: Alexander Atkins [REDACTED]
 Subject: Student Political Activity
 Date: November 4, 2015 at 10:06 AM
 To:



Greetings,

I write to you seeking clarity on the Law Center's policies regarding political activity by individual students and groups. I am a member of a group of students who are dedicating a portion of our extra-curricular time to supporting Senator Bernie Sanders' campaign for President. We are eager to contribute to our academic and professional community while also comporting with the University's policies.

I have read the campus-wide email providing guidance on the University's policies regarding political campaign activity, and have also read the [Rules Governing Political Activities on College and University Campuses](#) online. However, it remains unclear to me precisely what activity is and is not permitted when it comes to students, as it seems that the rules and guidance pertain almost entirely to the institution itself and its faculty and staff. I emailed the Office of Federal Relations in mid-September seeking additional clarity, but I never received a response.

Our group's request for a tabling reservation was denied by the Office of Student Life, and we were directed to the campus-wide email mentioned above. We were subsequently asked by OSL to vacate an un-reservable outdoor table where two members of our group were seated while providing information about Sanders' campaign and primary voting procedures with campaign materials on display.

Members of our group look forward to engaging in respectful, valued expression on the Law Center campus. Any guidance you can provide would be sincerely appreciated.

Thank you,

Alex

Alexander Atkins
 [REDACTED]
 Juris Doctor Candidate
 Georgetown University Law Center

Staff Member
 Georgetown Law Journal

Resident Fellow
 Gewirz Student Center

ATTACHMENT #6

From: Kenrick F. Roberts [REDACTED]
 Subject: RE: Student Political Activity
 Date: November 5, 2015 at 10:46 AM
 To: Alexander Atkins(fwd) [REDACTED]
 Cc: Beverly L. Sapp [REDACTED], Maura K Grant Hayes [REDACTED], Scott Fleming [REDACTED]



Hello Alex,

I apologize if my original statements to you regarding this were unclear, I will offer further explanation in my four points below.

First, your tabling request was denied because you are not a registered student organization or department at the Law Center; furthermore, you are not sponsored by a student organization or department and therefore cannot reserve space for your activities.

Second, as I mentioned when we spoke about this the first time, in regards to your supporting activity of Senator Sanders, as a non-profit institution of higher education whose activities are regulated in part by Section 501(c)(3) of the Internal Revenue Code, Georgetown University (which includes the Law Center) must avoid engaging in partisan political campaign activity and must restrict the use of University resources in support of such activity.

Third, even if a group is recognized on campus, student organizations may not use University resources to engage in partisan political campaign activities and must obtain advance approval from the Office of Student Life (and the Office of Federal Relations) for any such activities that occur on University premises (which includes Law Center premises as well).

Fourth, as it relates specifically to candidates for office, campaigning and solicitation, including transmission of campaign materials over the internet, leaflet distribution, and display of posters, is not allowed anywhere on Law Center property or using University servers or equipment.

You can download and review the policy in its entirety here: <https://orgsync.com/18903/files/587087/show>.

If you have further questions, or if I can clarify even further, please let me know.

Sincerely,

Kenrick F. Roberts, M.S. | Coordinator of Student Organizations
 GEORGETOWN LAW | [REDACTED]
 Office: 202.662.9272 | Fax: 202.662.9261
 Website | Facebook | Twitter | LinkedIn

ATTACHMENT #7

**GEORGETOWN LAW
STUDENT ORGANIZATION POLICY ON PARTISAN POLITICAL ACTIVITIES**

The Georgetown University Law Center encourages and supports the free exchange of ideas and political viewpoints. As a non-profit institution of higher education whose activities are regulated in part by Section 501(c)(3) of the Internal Revenue Code, however, Georgetown University and the Law Center must generally avoid engaging in partisan political campaign activity and must restrict the use of University resources in support of such activity.

The following rules govern the use of Law Center facilities and resources for partisan political activity.

Students, Staff and Faculty

Students, staff and faculty are encouraged to participate in the political process and are free to express their individual and collective political views. When doing so, individuals should make clear that the views they express are their own, and should not suggest or imply that they are speaking for or in the name of Georgetown University or Georgetown University Law Center. Individuals may not use the Georgetown name, insignia or seal on material that is used or intended for partisan political campaign purposes.

If University affiliated student organizations engage in activities that support or oppose particular candidates for election to public office, they should do so in a way that does not state or imply endorsement of their views by the University. Student organizations generally may not use University resources to engage in partisan political campaign activities (with the limited exceptions set forth in the *Use of Georgetown University Law Center Facilities and Resources* section below) and must obtain advance approval from the Office of student Life (and the Office of Federal Relations) for any such activities that occur on University premises.

Student organizations that wish to engage in lobbying in connection with or support of a particular cause may do so in some instances, but only with advance consultation with and approval from the Office of Federal Relations. Student organizations interested in such cause-related activities may contact the Office of Federal Relations at 202-687-3455 or by e-mail to ssf2@georgetown.edu. Of course, individual students are always free to advocate on areas of personal interest before Congress or any other governmental entity without involving the University provided that University resources are not utilized in that regard.

Candidate Speakers and Campaigning

Candidates for public office may appear on campus for a speech or an educational or informational talk to the Law Center community, but such appearances must be sponsored by a recognized Law Center organization and approved by the University. When the University allows one candidate to appear on campus, it generally must offer other candidates in the same election a substantially similar opportunity to appear. Student organizations should make clear to speakers who are candidates for political office that they may not engage in activities such as fundraising.

solicitation, or rallies while on campus. Student organizations must secure approval for such events from the Office of Student Life at least two weeks in advance.

Candidate campaigning and solicitation, including transmission of campaign materials over the internet, leaflet distribution, and display of posters, is not allowed anywhere on Law Center property or using University servers or equipment.

Use of Georgetown University Law Center Facilities and Resources

Law Center students, organizations and departments generally may use Law Center facilities and resources for activities relating to their missions, including politically oriented activities. Politically oriented student organizations may book a table in the Chapel Area on the first floor of McDonough Hall, but must post a sign that clearly indicates that use of the table does not imply endorsement of any particular political viewpoint from the Georgetown University Law Center. All uses of Law Center properties are subject to university policies regarding time, place, and manner.

Students, student organizations and departments may use campus communications to announce political forums and discussions that are sponsored by officially constituted campus groups, but may not use University-supported resources, including space on campus, Georgetown's phone system, computer networks or servers, or postal service, for partisan political campaign activity. Using Law Center resources or the Georgetown name to fund or support a political campaign or political action group or committee is strictly prohibited, as is the use of the University's tax-exempt number for purchase of anything associated with partisan political campaign activity. Law Center facilities and services may not be used by or on behalf of an outside organization or outside individual whose purpose is to further the cause of a particular political party or candidate.

Nonpartisan Political Activities

The University encourages nonpartisan political activities, such as properly organized voter registration activities, voter education programs and candidate debates, that do not evidence a preference for or opposition to a political party or to candidates who have taken a particular position and which provide an equal forum for opposing parties and candidates. In order to ensure that all legal and university requirements are followed, advance approval for these events must be obtained from (and all materials must be reviewed by) the Office of Student Life.

ATTACHMENT #8

From: Alexander Atkins [REDACTED]
Subject: Re: Student Political Activity
Date: November 9, 2015 at 2:48 PM
To: [REDACTED]



Hey Kenrick,

Thank you for the additional explanation, for directing me to the Policy on Partisan Political Activities, and for your offer to provide further information and clarity. I hope you won't mind my asking a couple follow-up questions.

(1) Who formulated and drafted the Policy on Partisan Political Activities?

(2) Is the primary rationale behind the Policy's restrictions to ensure that GULC is not perceived as engaging in partisan political activity, which would be violative of 501(c)(3)?

Thank you very much,

Alex

Alexander Atkins
[REDACTED]
Juris Doctor Candidate
Georgetown University Law Center

Staff Member
Georgetown Law Journal

Resident Fellow
Gewirz Student Center

ATTACHMENT #9

From: **Kenrick F. Roberts** [REDACTED]
 Subject: RE: Student Political Activity
 Date: November 9, 2015 at 3:17 PM
 To: Alexander Atkins(fwd) [REDACTED]



Hi Alex,

I am not sure as to the relevance of who drafted/formulated the Policy on Partisan Political Activity; nonetheless, it was developed by the University's Office of Federal Relations. Since the University is a tax-exempt organization, I am confident that your second statement is at least part of the rationale behind the policy since engaging in such activity could jeopardize the University's tax status. However, since I am not the one who wrote the policy, I cannot speculate as to what other rationales support the policy. If I can be of further assistance, please let me know.

Best,

Kenrick F. Roberts, M.S. | Coordinator of Student Organizations
 GEORGETOWN LAW | [REDACTED]
 Office: 202.662.9272 | Fax: 202.662.9261
 Website | Facebook | Twitter | LinkedIn

ATTACHMENT #10

From: Alexander Atkins [REDACTED]
 Subject: Student political activity
 Date: December 4, 2015 at 8:29 PM
 To: [REDACTED] Mitchell Bailin [REDACTED]



Dean Treanor and Dean Bailin,

We write to you seeking clarity on the Law Center's policies regarding political activity by individual students and groups.

We are members of a growing group of students who are dedicating a portion of our extra-curricular time to supporting Senator Bernie Sanders's campaign for President. We consider this activity to be meaningful, productive, and a natural extension of our development as lawyers and citizens. We are eager to respectfully share our enthusiasm with our academic and professional community, but our efforts to do so have been hindered by policies which we seek to more thoroughly understand.

The Office of Student Life has been forthcoming in answering questions and directing us to the "Policy on Partisan Political Activities." We were somewhat startled to discover that the policy seems to entirely prohibit students from using space on campus for political campaign activity. From what we can tell, the rationale behind this restriction is tied to 501(c)(3)'s prohibition on tax-exempt nonprofits engaging in partisan politics. Assuming this is the case, we are interested in exploring reasonable ways that we as students can permissibly engage in conduct which the institution itself is proscribed from.

Our group sincerely appreciates your attention to this matter. We look forward to gaining further insight into Georgetown's perspective on this issue, and finding ways for our group to engage in respectful, valued expression while also comporting with the University's policies.

Thank you,

Alex Atkins
 Dominic Gallucci
 Geoff Gilbert
 Matt Blair
 Parker Sheffy

Alexander Atkins
 [REDACTED]

Juris Doctor Candidate
 Georgetown University Law Center

Staff Member
 Georgetown Law Journal

Resident Fellow
 Gewirz Student Center



Chairman ROSKAM. Thank you, Mr. Atkins.
Ms. Sevchenko.

**STATEMENT OF CATHERINE SEVCENKO, DIRECTOR OF
LITIGATION, FOUNDATION FOR INDIVIDUAL RIGHTS IN
EDUCATION**

Ms. SEVCENKO. Good morning, Chairman Roskam, Ranking Member Lewis, Members of the Subcommittee. My name is Catherine Sevchenko. I am the Director of Litigation at the Foundation for Individual Rights in Education. FIRE is a nonprofit, non-partisan organization devoted to protecting the rights of students and faculty on American college campuses.

I think we all remember our first involvement with a political campaign, the camaraderie with the other supporters, the policy discussions, the strategy debates, and the euphoria when the candidate did well, and the bewilderment when he or she lost. Having that experience while you are in college can spark an engagement in politics that will last a lifetime.

But as you have just heard, the political engagement can be shut down at any moment on too many college campuses. As outlined in my written testimony, FIRE has intervened with 13 schools since 2008 that claimed that they could not allow political activity because it would jeopardize their tax-exempt status. These 13 cases did not include numerous informal interactions we have had with students to explain their rights to them, nor the students who have downloaded information from our website. And the number is going up. In fact, we received another request for help just a few days ago.

And this is a bipartisan problem. As you just heard, the law school of Georgetown stopped students from campaigning for Bernie Sanders. Right at about the same time, American University stopped students for campaigning for Rand Paul. And the prize, as it were, goes to St. Catherine University in Minnesota that, in 2008, refused to allow Hillary Clinton, Bay Buchanan, and Senator Al Franken to speak on campus.

Confusion over IRS guidelines is the likely cause of this censorship. General counsels are not going to allow political activity that they fear would endanger the school's tax-exempt status. As long as the IRS guidance is ambiguous, censorship will win out every time.

This Subcommittee could be instrumental in solving this problem. Were the IRS to clarify that viewpoint-neutral allocation of resources for political speech does not endanger an institution's tax-exempt status, it would be a huge step forward in preserving free speech on campus.

Justifying silencing speech by invoking tax-exempt status is just one tool of censorship. Another is a so-called free speech zone. To be clear, free speech zones have nothing to do with free speech. They are tiny areas of campus where students are quarantined when they want to express themselves on the issues of the day.

Merritt Burch and Anthony Vizzone, two students at the University of Hawaii Hilo were told they would have to stand "here" if they wanted to protest NSA surveillance, because it wasn't the 1960s, and they really couldn't protest like that any more. To vindi-

cate their rights, they sued and the case was settled after the free speech zones in the entire University of Hawaii system were abolished.

Student Robert Van Tuinen, a veteran, was prevented by campus security from handing out copies of the Constitution on Constitution Day. Although he literally had the First Amendment in his hand, a Modesto junior college administrator said he could only distribute the Constitution in this free speech zone, a tiny, out-of-the-way concrete stage.

At Blinn College in Texas, Nicole Sanders decided to attract new members to the campus chapter of Young Americans for Liberty by talking about gun rights. An administrator told her she would have to stand in this free speech zone, literally the size of a parking space, and she was also told she would need special permission to talk about guns. Her lawsuit is ongoing.

And finally, at Western Michigan University, a student group, the Kalamazoo Peace Center, was told it would have to pay for security to have Boots Riley, a rapper and social activist, speak at its Peace Week celebration. By taxing Riley's speech with a fee that the students couldn't afford, WMU effectively banned him from campus. Thanks to the students' lawsuit, WMU can no longer censor speech in the name of security.

FIRE supported the lawsuits of these students, but legal action is time-consuming and expensive. Clear guidance on political activity from the IRS would signal to colleges and universities this Subcommittee's view that expressive rights must be respected. As the primary congressional committee with oversight authority over the IRS, you are in a unique position to communicate to the agency the urgent need for guidance.

Yesterday was Super Tuesday. Now is the time to clarify that political activity restrictions do not apply to students or faculty, but just to the colleges and universities themselves. Thank you very much.

[The prepared statement of Ms. Sevcenko follows:]

WRITTEN TESTIMONY of CATHERINE SEVCENKO
Director of Litigation,
Foundation for Individual Rights in Education

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) 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.¹

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.² 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.³ The IRS has accordingly concluded that the restriction on political activity does not apply to individual academic community members.⁴ In continuing education materials regarding "Election Year Issues" released in 2002, the agency made clear that "[i]n order to

¹ 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.

² 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>.

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

⁴ 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."⁵ 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."⁶

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.

⁵ *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>).

⁶ *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.⁷ 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.⁸

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

⁷ 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.

⁸ 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,⁹ 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."¹⁰

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."¹¹

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.¹²

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."¹³ 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

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

¹⁰ *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/>.

¹¹ 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>.

¹² 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>.

¹³ *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.”¹⁴ After FIRE wrote to the Montclair State University administration on the student group’s behalf, the Association’s then-president rescinded the sanctions.¹⁵

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**.”¹⁶ 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.”¹⁷ 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.¹⁸

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.¹⁹ 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 2011²⁰ and signs from dormitory windows supporting then-senator Barack Obama at the University of Texas at Austin in 2008.²¹

¹⁴ *Id.*

¹⁵ *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).

¹⁶ *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).

¹⁷ *Id.*

¹⁸ 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>.

¹⁹ 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>.

²⁰ 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>.

²¹ 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.²²

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[.]"²³ 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."²⁴ 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 policies are common and hinder students' ability to be politically active on campus.²⁵ 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."²⁶ 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

²² 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.

²³ 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>.

²⁴ *Id.*

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

²⁶ Photo included in supplemental materials.

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

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.²⁸ With FIRE’s assistance, Nicole filed a First Amendment lawsuit to vindicate her rights.²⁹ 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.³⁰

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,
Catherine Sevchenko
Director of Litigation
Foundation for Individual Rights in Education
777 North Capitol Street NE, Suite 802
Washington, DC 20002
(215) 717-3473
catherine@thefire.org

²⁷ 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>.

²⁸ Photo included in supplemental materials.

²⁹ 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>.

³⁰ 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.

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.¹

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.² 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.³

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.⁴

¹ 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/>.

² 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/>.

³ 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/>.

⁴ 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.¹ Washington also admonished the group that it was only to focus on Palestinian culture and not to take positions on political issues.² 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.³ 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.⁴

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.⁵

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.⁶ CNU refused to waive a 10-day notice requirement for student groups wishing to engage in

¹ 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>.

² 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/>.

³ 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/>.

⁴ 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/>.

⁵ 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>.

⁶ 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.⁷

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."⁸ 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.⁹ On October 23, the board did just that, and the event was able to move forward.¹⁰

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."¹¹ FIRE asked the college to revise this unconstitutional policy in accordance with the First Amendment rights of student groups like SSDP.¹²

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.¹³ FIRE wrote to

⁷ *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.

⁸ 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/>.

⁹ 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/>.

¹⁰ 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/>.

¹¹ 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/>.

¹² 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/>.

¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷

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.¹⁸

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

¹⁴ 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/>.

¹⁵ 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.

¹⁶ 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).

¹⁷ 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/>.

¹⁸ 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.¹⁹

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.²⁰ 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.²¹

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.²² 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."²³ 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."²⁴

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.²⁵

¹⁹ 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/>.

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

²¹ 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/>.

²² 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>.

²³ 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/>.

²⁴ 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/>.

²⁵ *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)



“Free Speech” Zone Dixie State University (Utah)



“Free Speech” Zone

University of Hawaii at Hilo



“Free Speech” Zone Blinn College (Texas)



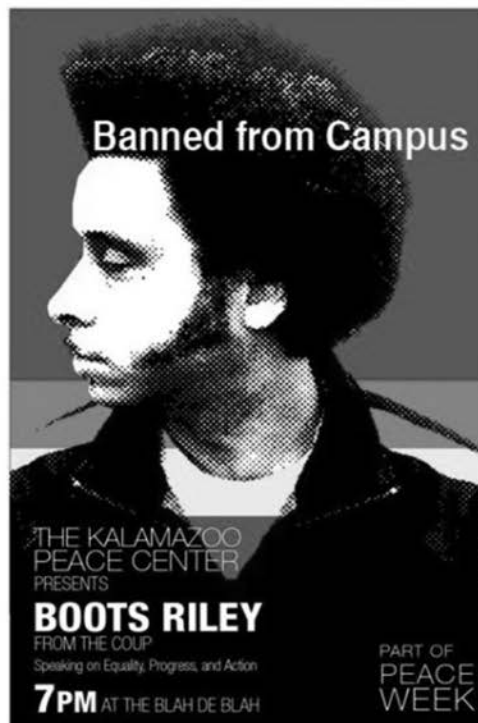
- After recruiting new members for Young Americans for Liberty (YAL) outside the Student Union, Nicole was told that she could only do so in the “Free Speech” Zone, two squares of pavement, 11 x 16 feet in area.

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.

Chairman ROSKAM. Thank you.
Mr. Zuckerman.

STATEMENT OF JOSHUA ZUCKERMAN, STUDENT, PRINCETON UNIVERSITY, AND FOUNDING MEMBER OF THE PRINCETON OPEN CAMPUS COALITION

Mr. ZUCKERMAN. Thank you. I would like to begin by thanking Chairman Roskam and Ranking Member Lewis and the Members of this Subcommittee for holding this hearing and inviting me to testify. It is an honor to have the opportunity to help raise congressional awareness of threats to open dialogue and to free speech on our college campuses.

I am a cofounder of the Princeton Open Campus Coalition—that is POCC for short. We are a nonpartisan group of conservative and liberal undergraduates dedicated to protecting the diversity of thought and the right of all students and professors to advance their academic and personal convictions in a manner free from intimidation. We believe that the protection of free speech is vital to the academic flourishing of the university.

Student protestors at Princeton have recently demanded cultural competency training for the faculty, mandatory classes on so-called marginalized peoples, and affinity housing for students interested in black culture. As I explained in my written testimony, POCC opposes each of these ideas, due to their destructive effects on the free flow of speech and thought. These ideas, if implemented, would create university-sanctioned orthodoxies. Those who defy these orthodoxies will be publicly slandered and labeled as racists. This is not mere speculation; it is already happening.

Members of POCC, since formally opposing these demands, have been subjected to senseless ad hominem attacks that would effectively silence many members of the campus community. In a Facebook post a black POCC cofounder criticized the demands for advocating, in his words, “self-segregation and censorship.” He was then effectively labeled a race traitor. Someone asked him, “Why don’t you post something supporting your people, instead of trying to bring down those trying to uplift blacks?”

Similarly, a white POCC cofounder wrote an op ed in the campus newspaper in which she pointed out the hypocrisy of anti-racism protesters making these race-based judgments. In response to this article, a groups of protestors screamed obscenities at her, while demanding that she not be allowed to participate in a public open forum due to her allegedly racist beliefs. They sought to prevent her from espousing her ideas.

Numerous other students have privately confided to POCC that they also oppose the demands, but are afraid to speak out for fear of being publicly subjected to these vicious ad hominem attacks.

Now, these attacks go far beyond personal insults. For instance, a student who wrote an article in defense of free speech in the campus conservative magazine woke up to find a shredded copy of the magazine taped to her door. Someone went out of their way to find out where she lived, and to try to intimidate her.

This is what we are seeing at Princeton today, and these demands haven’t even been implemented. Imagine what would happen if the university itself were to vindicate the protestors’ world

view, thereby reinforcing this notion that those who disagree need to be re-educated.

The student protestors are attempting to portray POCC's concern with free speech as misguided. This could not be further from the truth. Consider this excerpt from an op ed written by a protest leader in the student newspaper. She wrote, "If your freedom of thought means that I, a black student, do not have the luxury of feeling safe on a campus that I have worked my entire life to get to, it should have no place in universities or any other beloved institution."

As this excerpt demonstrates, protestors seek to purge the university of ideas that make them feel unsafe. But no one at Princeton is unsafe. There has not been a single instance of violence, and no one has called for the subjugation of minorities. Anyone who did would be unanimously and instantly condemned, and everyone knows that. These attempts to bully students into silence—and, when that fails, to demand the creation of policies that will have similar effects—are utterly intolerable.

Speech at Princeton currently enjoys robust protection. The status quo, as far as things go nationwide, is pretty good. Protestors seek to change that.

As I mentioned, POCC opposes each demand, and respects the right of all students to advance their personal convictions. Naturally, this does include advocacy for the aforementioned demands. POCC has helped lead the fight against these proposed policies. We have met with the president of Princeton and members of the board of trustees. We have written several op eds in campus and national newspapers, participated in public debates, and appeared on national news.

Today, POCC would like to call on our political leaders to reaffirm the importance of free speech on college campuses. President Obama rightly condemned students who feel a need, as he said, "to be coddled and protected from different points of view." You shouldn't silence speakers by saying, "You can't come because I am too sensitive to hear what you have to say."

We hope Congress and all of our elected officials will follow President Obama's example and unite in condemnation of students and administrators who seek to restrain or to prevent those who advance controversial views from exercising their fundamental right to free speech. The importance of this issue transcends partisan and ideological divisions, and should unite all Americans in defense of our universities, our principles, and our future. Thank you.

[The prepared statement of Mr. Zuckerman follows:]

I am a co-founder of the Princeton Open Campus Coalition (POCC), a non-partisan and ideologically heterogeneous group of undergraduates dedicated to protecting diversity of thought and the right of all students and professors to advance their academic and personal convictions in a manner free from intimidation. POCC believes that the fundamental goal of the liberal arts university is devotion to the principles of academic excellence and the search for truth. This consists of far more than mere knowledge. The successful university will equip its students with the skills to reconcile factual knowledge with human reason: rhetoric, debate, research, logic, writing, and analytical thought processes. It will provide its students with valuable experiences that enable intellectual maturation. Students will be exposed to the unknown, learn from their failures, and adapt to meet future challenges. Perhaps most importantly, the university builds character and virtues such as open-mindedness, honor, mental fortitude, perseverance, and tolerance for others' cultures, backgrounds, and opinions.

Discourse lies at the center of academic excellence. Indeed, it is through the discussion of reasoned arguments that students learn to develop and defend the merits of their own position and to scrutinize and criticize the flaws of opposing viewpoints. As such, the protection of free speech, restrained only insofar as reasonable time, place, and manner considerations necessitate, is vital to the academic flourishing of the university.

The Faculty of Princeton University wisely recognized the importance of the free flow of ideas in its adoption of the University of Chicago's free speech policy on April 6, 2015:

“In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.”¹

We are unfortunately living in an era of out-of-control political correctness in which ideas that are subjectively and sometimes unreasonably deemed offensive are considered dangerous and therefore deserving of restraint, suppression, or correction. Interestingly enough, it is students rather than university bureaucracies that are behind the latest movements to subdue speech on campus. Following similar protests at Yale University and the University of Missouri, Princeton students led by the Black Justice League (BJL) occupied President Christopher Eisgruber’s office in November 2015 and issued numerous demands, three of which will have especially chilling effects on academic discourse if implemented. In response to these demands and student desires to maintain Princeton’s vibrant intellectual culture, I helped found POCC, which has led the fight against these fundamental threats to Princeton’s robust and vibrant academic culture.

One of these demands calls for “cultural competency training for all staff and faculty.”² According to the BJL, “requiring cultural competency training for faculty

¹ This excerpt from Princeton University’s *Rights, Rules, and Responsibilities* section 1.1.3 is available online at <https://www.princeton.edu/~princetonschoolofpublicaffairs/sites/default/files/2015-09/Princeton%20University%20Rights%20Rules%20and%20Responsibilities.pdf>. The BJL articulated this demand in its petition (henceforth BJL Petition) online at <https://www.change.org/p/princeton-university-administration-occupynassau-meet-black-student-s-demands>.

is not imposing a particular doctrine onto Princeton's faculty."³ This could not be further from the truth. Cultural competency training programs at other universities seek to purge the classroom of the dissemination of perfectly innocuous ideas that are arbitrarily declared politically incorrect. Consider, for instance, a publication called *Diversity in the Classroom, UCLA Diversity & Faculty Development, 2014*. It contained a guide instructing faculty that the certain statements "communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership." Examples of "hostile" statements included: "America is a melting pot," "I believe the most qualified person should get the job," and "Affirmative action is racist." It encouraged faculty to both refrain from espousing these views and to condemn students who do so.⁴ This inanity also surfaced in the University of New Hampshire's "Bias-Free Language Guide," (published in July 2015 but rescinded after public uproar) which in an effort to "invite inclusive excellence" employed social pressure to eliminate terms such as 'American' 'Senior citizen,' 'healthy,' 'rich,' and 'poor.'⁵ Cultural competency training seeks to eliminate terms and ideas that are wrongly considered harmful by the easily offended.

The second of these demands was that "classes on the history of marginalized peoples (for example, courses in the Department for African American Studies) be added to the list of distribution requirements."⁶ If accepted by the University, this demand will provide immense power to curriculum-designing committees and to the

³ The BJL defended cultural competency training in an editorial in the *Washington Post* (henceforth BJL WaPo), available online at <https://www.washingtonpost.com/news/grade-point/wp/2015/12/04/princeton-protesters-why-we-need-safe-spaces-and-why-honoring-woodrow-wilson-is-spitting-in-our-faces/>.

⁴ The guide is available at http://advance.ucl.edu/ADVANCE%20PDFs/Climate/Microaggressions_Examples_2014_11_19.pdf

⁵ See <http://campusreform.org/?ID=6697>.

⁶ BJL Petition

professors who will teach these mandatory classes. Firstly, the committee must grapple with the highly political question of which peoples are marginalized. There is no societal consensus on this issue, and any determination by the committee will impose the subjective findings of (predominantly leftist) ivory-tower theorists as objective fact. These classes would be taught by already politicized departments such as the Department of African American Studies and the Program in Gender Studies, thereby promoting groupthink and the imposition of liberal orthodoxies. Even if such classes were taught by fair and objective professors, their very premise that some demographic groups are marginalized and oppressed by American society serves to indoctrinate students as to the truth of what is at best a dubious presupposition and at worst highly biased propaganda. This, of course, raises the question of what will happen to the students who oppose the University-sanctioned narrative and deny the marginalization of “marginalized” peoples. Grading bias and derision from professors very real possibilities.

The third of these demands called for a “cultural space on campus dedicated specifically to Black students.”⁷ With no consultation of the student body whatsoever, the University has already surrendered to this demand and assigned “temporary affinity rooms” to black, African-American, Latino, Asian, Asian-American, Arab, and Middle-Eastern students.⁸ The assignment of these rooms is in itself questionable (e.g. all of Asia’s diverse cultures are represented in a single room, why do Arabs get a room when Indians do not?). In theory, the rooms are spaces dedicated to the celebration of minority and foreign cultures and will offer a

⁷ Ibid.

⁸ The *Daily Princetonian* reported on the creation of these rooms: <http://dailyprincetonian.com/news/2016/01/temporary-affinity-rooms-assigned-at-fields-center/>.

refuge to students who feel marginalized and oppressed by mainstream campus life. In reality, they are but safe spaces that will insulate students from ideas. The proponents of these rooms claim that all students will be welcome. If we buy into this, we must ask how students with dissenting opinions will be treated. What will happen when a white student, in an effort to meet Arab peers and learn about Arab culture, enters the room and respectfully condemns certain aspects of said culture? What will happen to a black student who enters the black affinity room and tells her peers that they are neither oppressed nor marginalized? To ask these questions is to answer them. Certain ideas will be unwelcome in these rooms, which will undermine the University's commitment to facilitating dialogue on society's most important issues.

Similarly, BJL has also demanded affinity housing for students interested in black culture. The same problems abound. Affinity housing would be de facto racially segregated and would thus balkanize the University. Students who deny the institutionalized narrative of black students as marginalized and oppressed will be accused of invading their peers' home with the intention of bullying or intimidating them. Affinity housing undermines the University's commitment to diversity and will create a community that is ideologically and politically heterogeneous, thereby decreasing the likelihood that students will develop their skills and character via exposure to those who disagree. This is anathema to the core mission of the University. POCC believes there should be no space at a university in which any member of the community is "safe" from having his or her most cherished values

challenged. It is the very mission of the university to seek truth by subjecting all beliefs to critical, rational scrutiny.

POCC opposes each of these demands, as they will either create a University-sanctioned orthodoxy or will create zones in which certain ideas will not be tolerated. While none of these policies would lead to outright censorship or punishment of those who advance “offensive” ideas, they nevertheless would produce immense social pressures to conform to a certain narrative of race in America. Students would be afraid to speak out for fear of being slandered. POCC has already witnessed this both at Princeton and beyond (see Attachment 1), as numerous students have confided in us that they oppose the BJL’s demands but are afraid of publicly taking a stand for fear of being labeled a racist.

Members of POCC have been subjected to senseless ad hominem attacks that would effectively silence many members of the campus community. Josh Freeman, a liberal, black POCC co-founder, was excoriated in a public Facebook comment (Attachment 2) after condemning the BJL for advocating “self-segregation and censorship.” He was told his white friends did not care about him and was effectively labeled a race traitor: “Josh, why don’t you post something supporting your people instead of trying to bring down those trying to uplift blacks?”

Similarly, Devon Naftzger, a white co-founder of the POCC, describes her experience in an article she and I co-authored for the *National Review* (Attachment 3):

I felt compelled to speak out against their demands and tactics. In an op-ed in Princeton’s student newspaper, titled “We can do better,” I point out the hypocrisy of anti-racism protesters’ making race-based judgments: “As a fundamental principle of equality, the weight of a

person's opinions should not be a function of their skin color but rather the quality of their arguments." This article alone caused a group of protesters to scream profanities at me while accusing me of being racist and request that I not be allowed to attend an open forum to voice my opinion.⁹

Destiny Crockett, a BJJ leader, further engaged in this race-baiting in an op-ed in the *Daily Princetonian* in response to a piece written by POCC co-founder Beni Snow that defended a Yale professor who sparked controversy by arguing that her university should not regulate "offensive" Halloween customs: "Beni, you, as a white person who benefits from (gasp!) white privilege, do not have to worry about many of the things students of color worry about on a daily basis, so your "worry" in this case is of miniscule value [...] your opinion on what students of color at Yale or any other institution ask of their peers and administration is moot."¹⁰

Even without the institution of BJJ's policy demands, students at Princeton are being vilified, slandered, and portrayed as racists simply because they have the audacity to respectfully advance their personal beliefs. The BJJ publicly purports to value freedom of speech. It "is a mark of civil life and should be vigorously defended." The BJJ hypocritically says, "if freedom of speech is defined as the ability to vilify," as it and its supporters so often do to their opponents, "this definition does not align itself with the noble idea of civility."¹¹ Apparently, vilification is only a permissible tactic when used by the BJJ and its allies.

⁹ The editorial written by Ms. Naftzger and I can be found at <http://www.nationalreview.com/article/429064/free-speech-princeton-protesters>.

¹⁰ Ms. Crockett's op-ed can be found at <http://dailyprincetonian.com/opinion/2015/11/in-response-to-in-the-defense-of-the-christakises/>.

¹¹ BJJ WaPo.

Despite their professed allegiance to the principles of free speech, BJJ leaders seek to purge Princeton of those who disagree with their worldview. In her op-ed in the *Daily Princetonian*, Ms. Crockett wrote,

“if your freedom of thought [emphasis added] means that I, a Black student, do not have the luxury of feeling safe on a campus that I have worked my entire life to get to, it should have no place in universities or any other beloved institution.”

As Ms. Naftzger and I observed in our *National Review* editorial, Ms. Crockett is “employing hyperbole in an attempt to demonize dissent.” There has not been a single instance of racial violence at Princeton, nor has there been any call for the subjugation of minorities. Either of these, of course, would be instantly and unanimously condemned—and everyone knows that. Nevertheless, Ms. Crockett wishes to ban free thought (not to mention free speech), simply because it somehow threatens her safety.

As I have explained at length, some Princeton undergraduates are attempting to create an atmosphere of hostility in which those who disagree with their beliefs will be publicly intimidated, personally slandered, and subjected to vicious ad hominem attacks. University adoption of cultural competency training, creation mandatory courses in the study of “marginalized” peoples, and establishment of affinity housing would only exacerbate these problems.

POCC strives to counteract these recent trends by promoting a culture in which academic discourse and reasoned argument can thrive. While we certainly have our own firm convictions, we do not seek to impose our beliefs on others. We

believe the role of the university is to teach students *how* to think rather than *what* to think. We respect and fight for the rights of all students to advance their personal convictions—whatever they may be. Naturally, this includes advocacy for the aforementioned demands.

Since our founding only a few months ago, we have led the movement to defend the principles at the core of the university's mission. Our open letter to President Eisgruber (Attachment 4) generated considerable national attention. Our co-founders have met with President Eisgruber and members of the Board of Trustees. We have appeared on nationally televised news programs, written editorials for numerous publications, led public debates at Princeton, and inspired the creation of similar Open Campus Coalitions at Duke and Brown Universities. I will be speaking about my experiences with POCC at the Conservative Political Action Conference on March 6.

I would like to conclude with an account of my own experiences at Princeton. I have truly enjoyed and cherished my time at this university. I have had the opportunity to take classes from conservative professors and liberal professors, all of whom have been fair and open-minded and have treated disagreeing students with the utmost respect. The same has been true for most, but not all, of my peers.

I have written for the *Princeton Tory*, a magazine of conservative political thought, for four years. To say the least, our conservative magazine is rather unpopular on a predominately liberal campus. When I wrote an article critical of feminism, no one called me a misogynist. When I belittled the notion of racial microaggressions, I was not referred to as a racist. Instead, people (for the most part)

respectfully rebutted my ideas or just dismissed them as ridiculous. No one attempted to intimidate, demean, or slander me.

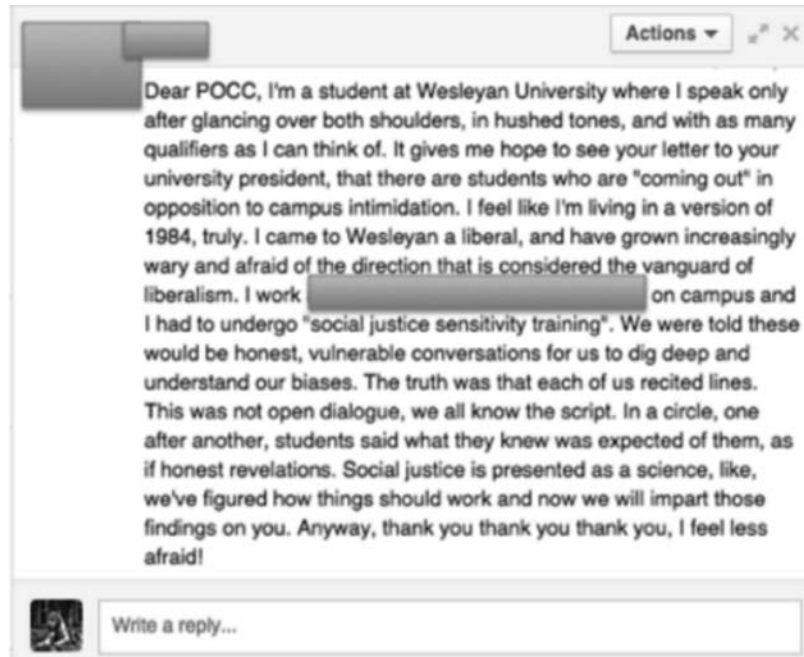
My classmates overwhelmingly display the virtues that are vital to the functioning of the university: open-mindedness, candor, respect, tolerance, and erudition. They demonstrate a willingness to evaluate an argument based on its merit rather than the identity of its advocate. Until last year, I had witnessed only a handful of isolated incidents of intolerance for others' viewpoints. Since then, I have seen numerous disturbing instances of closed-mindedness and unwillingness to tolerate dissent. Most disturbing among these was when a student who wrote a pro-free speech article for the *Tory* woke up to find a shredded copy of the magazine taped to her door.

It is because of my love for my soon-to-be alma mater that I fear for its future. The university must, in addition to refusing BJL's destructive demands, take affirmative measures to protect diversity of thought and foster a community in which all students can advance their views without fear of intimidation. Other universities must follow suit.

Although I am skeptical that governmental intervention is the proper way to solve the current crises on private college campuses, our political leaders must reaffirm the importance of free speech as a core American value. President Obama rightly condemned students who feel a need "to be coddled and protected from different points of view. You shouldn't silence [speakers] by saying, 'You can't come because I'm too sensitive to hear what you have to say.'"¹² POCC calls on our elected officials, liberal and conservative, Democrat and Republican, to follow our

¹² See <http://thehill.com/blogs/blog-briefing-room/news/253641-obama-hits-coddled-liberal-college-students>.

president's example and unite in condemnation of students and university administrators who seek to restrain or prevent those who seek to exercise their fundamental human right to free speech, especially that which is perceived as tasteless or offensive, for it is the most offensive speech that requires the most protection.





Josh Freeman

November 19 · 11

Self-segregation and censorship, that is how BJL chose to "fix" racial issues on campus. Good job BJL, you all still don't have my support.



Like



Comment



Share

and 60 others like this.

Josh, why don't you post something supporting your people instead of trying to bring down those trying to uplift blacks (whether you disagree with their methods of not)?

Or at least show some support for black people going through struggle while you support France, a country that is supported by colonial taxes from Africa

Like · Reply · 6 · November 19 at 7:51pm · Edited

is right. We gotta stand in solidarity with each other. At the end of the day, we only got us. Nobody ever loved us except for us.

Like · Reply · 2 · November 19 at 8:02pm

Josh Freeman That does not mean I'm obligated to agree with you all.

Like · Reply · 19 · November 19 at 8:06pm

I'm going to pray for you. Because you are a black person, I care about you. And I promise these white people do not about you as much as we do. So stay tf woke

Like · Reply · November 19 at 8:14pm

Josh Freeman You're a great person but I don't need you to pray for me. I'm awake enough to have my own opinions and not see this world as an us vs. them. Cooperation and dialogue, not division and forming factions, are the best ways forward. I'm more woke than you think.

Like · Reply · 44 · November 19 at 8:24pm

Attachment 3—National Review Article

Last month, a group of student protesters led by an organization called the Black Justice League occupied Princeton University president Christopher Eisgruber's office for 32 hours and refused to leave until he had signed a watered-down version of their demands. These demands included instituting a "safe space" on campus, renaming the Woodrow Wilson School of Public and International Affairs and the Wilson residential college because of President Wilson's racist beliefs, mandating "cultural competency" training for faculty, instituting a distribution requirement that would force students to take a course on "marginalized peoples," and providing de facto racially segregated "affinity housing" (disguised as housing for students interested in black culture).

There has been lots of controversy on campus about whether the protesters can be credited with promoting dialogue or stifling it. While the group stated publicly that it supports free speech, some members' words and actions contradict this claim. Protesters purport to seek diversity, but what they really want is conformity.

For example, some protesters publicly shame and stigmatize those who question their demands and methods, thus promoting a campus culture of intimidation. Many non-black students who opposed the protest refrained from voicing their criticism out of fear of being labeled as racists and subjected to ad hominem attacks. Some students resorted to an anonymous forum called Yik-Yak to post statements like, "It's alarming how few people publicly oppose BJL [protesters] even though I've gotten the impression that most people don't support them," to which another person replied, "If you publicly speak out against BJL people fear being labeled as a racist."

Many students have witnessed that detrimental labeling firsthand. After attending the protest, I (Devon) was so shocked by what I saw that I felt compelled to speak out against their demands and tactics. In an op-ed in Princeton's student newspaper, titled "We can do better," I point out the hypocrisy of anti-racism protesters' making racebased judgments: "As a fundamental principle of equality, the weight of a person's opinions should not be a function of their skin color but rather the quality of their arguments." This article alone caused a group of protesters to scream profanities at me while accusing me of being racist and request that I not be allowed to attend an open forum to voice my opinion. A Black Justice League leader reinforced this fear when she responded to another student's article by writing that because of his "white privilege" his opinion was "moot" and "of miniscule value." By focusing on the race of an opponent or portraying him or her as racist, protesters seek to shut down debate rather than engage them with legitimate points of disagreement.

Minority students are also subjected to this racially divisive and stigmatizing rhetoric. For instance, after posting a Facebook status questioning protesters' demands, a dissenting black sophomore was told by a protest leader to suppress his opinion and instead "stand in solidarity" and support "your people." He was told that white people did not care about him and that his black peers would pray for him — as if his free thought were a mortal sin. It is appalling that anyone in our nation, let alone a college student

who cherishes academic debate, is treated like a traitor or “white sympathizer” for simply expressing thoughts contrary to those of other students of his race. Similarly, Hispanic and black students who oppose the protesters have been called “tokens” of their white peers. The message is clear: Conformity to the protesters’ worldview is required; there is no room for diversity of thought.

In response to this toxic campus culture, we helped found the Princeton Open Campus Coalition (POCC) to protect diversity of thought and promote the right of all students to advance their academic and personal convictions in a manner free from intimidation. We seek to counteract the politically correct culture on college campuses that victimizes both liberal and conservative students by pressuring them to hold certain beliefs depending on their gender, sexuality, ethnicity, race, or other demographic traits.

A key element of the protesters’ strategy is to “reeducate” minority students who do not think of themselves as victims. A black POCC member was told at a public debate that her well-reasoned opposition to the protesters’ tactics and demands was simply “a result of internalized oppression.” This is an underhanded attempt to avoid meaningful engagement with her ideas by attempting to create a victim complex within a student who does not believe that she has been discriminated against or persecuted at Princeton on account of her race.

Students on Princeton’s campus, and any campus for that matter, should have the intellectual freedom to espouse whatever idea they choose, especially if it is controversial or uncharacteristic, for it is controversial ideas that tend to generate the most robust and productive debate. As POCC wrote in our letter to President Eisgruber, “there should be no space at a university in which any member of the community, student or faculty, is ‘safe’ from having his or her most cherished and even identity-forming values challenged.”

Yet protesters request insulation from controversial and potentially offensive conversations by demanding affinity housing and a “safe space” where they can seek shelter from the “danger” posed by ideas. This insularity contradicts the core mission of the university. A Black Justice League leader’s opinion piece argued:

“If your freedom of thought means that I, a Black student, do not have the luxury of feeling safe on a campus that I have worked my entire life to get to, it should have no place in universities or any other beloved institution.”

She appears to be arguing that allegedly offensive thoughts somehow threaten the physical safety of minorities. Never mind that she ignores the difference between feeling threatened and being threatened. Never mind that she cannot cite a single instance of actual racial violence at Princeton, or even a credible threat thereof. While we certainly respect the author’s right to voice her opinion, her call to purge Princeton of “freedom of thought” is antithetical to the mission of the university and anathematic to its search for

truth and wisdom.

It's clear that a call for the subjugation of, or genuine violence towards, minorities at Princeton or any other mainstream American university would be met with forceful and near-unanimous condemnation. Those who believe otherwise and claim that offensive or un-p.c. views at Princeton actually jeopardize students' safety are employing hyperbole in an attempt to demonize dissent.

In shying away from sharing opinions on "touchy subjects" such as this that may offend other students, we do a disservice to students who came to Princeton to improve their intellects and be exposed to diverse perspectives — which includes having their ideas scrutinized. We also worked our entire lives to get into Princeton, and we, unlike some of our peers, came here to think and to have our ideas challenged, not to be coddled and protected from those who blaspheme against the postmodern orthodoxies of the sort protesters are seeking to enforce at Princeton and across the nation.

The Black Justice League has indeed done a service to Princeton by raising the issue of President Wilson's racism and inspiring a passionate philosophical debate about veneration. As a precursor to student debates on issues like this, however, the right to exercise freedom of thought and expression must first be protected for all students. No group should dictate what student traits (especially demographic ones) are prerequisites for debate participation; instead, all opinions should be invited, considered, and challenged in a civil manner. When all students, regardless of race or ideology, feel welcome to participate in the campus conversation, arguments will inevitably be advanced that make most people uncomfortable. Good. Offense and discomfort are signs that one's preconceived notions are being challenged. That is what is supposed to happen in a university worthy of the name.

— Devon Nicole Naftzger and Josh Zuckerman are seniors at Princeton University.

Attachment 4: Open Letter to President Eisgruber

Dear President Eisgruber,

We write on behalf of the Princeton Open Campus Coalition to request a meeting with you so that we may present our perspectives on the events of recent weeks. We are concerned mainly with the importance of preserving an intellectual culture in which all members of the Princeton community feel free to engage in civil discussion and to express their convictions without fear of being subjected to intimidation or abuse. Thanks to recent polls, surveys, and petitions, we have reason to believe that our concerns are shared by a majority of our fellow Princeton undergraduates.

Academic discourse consists of reasoned arguments. We simply wish to present our own reasoned arguments and engage you and other senior administrators in dialogue. We will not occupy your office, and, though we respectfully request a minimum of an hour of your time, we will only stay for as long as you wish. We will conduct ourselves in the civil manner that it is our hope to maintain and reinforce as the norm at Princeton.

This dialogue is necessary because many students have shared with us that they are afraid to state publicly their opinions on recent events for fear of being vilified, slandered, and subjected to hatred, either by fellow students or faculty. Many who questioned the protest were labeled racist, and black students who expressed disagreement with the protesters were called “white sympathizers” and were told they were “not black.” We, the Princeton Open Campus Coalition, refuse to let our peers be intimidated or bullied into silence on these--or any--important matters.

First, we wish to discuss with you the methods employed by protesters. Across the ideological spectrum on campus, many people found the invasion of your office and refusal to leave to be troubling. Admittedly, civil disobedience (and even law-breaking) can sometimes be justified. However, they cannot be justified when channels of advocacy, through fair procedures of decision-making, are fully open, as they are at our University. To adopt these tactics while such procedures for debate and reform are in place is to come dangerously close to the line dividing demonstration from intimidation. It is also a way of seeking an unfair advantage over people with different viewpoints who refuse to resort to such tactics for fear of damaging this institution that they love.

Second, we welcome a fair debate about the specific demands that have been made.

We oppose efforts to purge (and literally paint over) recognitions of Woodrow Wilson’s achievements, including Wilson College, the Woodrow Wilson School of Public and International Affairs, and his mural in Wilcox Dining Hall. As you have noted, Wilson, like all other historical figures, has a mixed legacy. It is not for his contemptible racism, but for his contributions as president of both Princeton and the United States that we honor Wilson. Moreover, if we cease honoring flawed individuals, there will be no names adorning our buildings, no statues decorating our courtyards, and no biographies capable of inspiring future generations.

We worry that the proposed distribution requirement will contribute to the politicization of the University and facilitate groupthink. However, we, too, are concerned about diversity in the classroom and offer our own solution to this problem. While we do not wish to impose additional distribution requirements on students for fear of stifling academic exploration, we believe that all students should be encouraged to take courses taught by professors who will challenge their preconceived mindsets. To this end, the University should make every effort to attract outstanding faculty representing a wider range of viewpoints--even controversial viewpoints--across all departments. Princeton needs more Peter Singers, more Cornel Wests, and more Robert Georges.

Similarly, we believe that requiring cultural competency training for faculty threatens to impose orthodoxies on issues about which people of good faith often disagree. As Professor Sergiu Klainerman has observed, it reeks of the reeducation programs to which people in his native Romania were subjected under communist rule.

We firmly believe that there should be no space at a university in which any member of the community, student or faculty, is "safe" from having his or her most cherished and even identity-forming values challenged. It is the very mission of the university to seek truth by subjecting all beliefs to critical, rational scrutiny. While students with a shared interest in studying certain cultures are certainly welcome to live together, we reject University-sponsored separatism in housing. We are all members of the Princeton community. We denounce the notion that our basic interactions with each other should be defined by demographic traits.

We hope that you will agree to meet with us. We will be happy to make ourselves available to meet in your office at your earliest convenience. We are also requesting a meeting with the Board of Trustees. For reasons you have articulated in your recent message to the community, there is no time to waste in having these discussions.

Unlike their counterparts at other universities, Princeton undergraduates opposed to the curtailment of academic freedom refuse to remain silent out of fear of being slandered. We will not stop fighting for what we believe in.

Thank you very much for your consideration. We look forward to your reply.

-The Legislative Committee of Princeton Open Campus Coalition

Allie Burton '17
 Evan Draim '16
 Josh Freeman '18
 Sofia Gallo '17
 Solveig Gold '17
 Andy Loo '16
 Sebastian Marotta '16
 Devon Naftzger '16
 Beni Snow '19
 Josh Zuckerman '16



Chairman ROSKAM. Thank you, Mr. Zuckerman.
Professor George.

STATEMENT OF ROBERT P. GEORGE, MCCORMICK PROFESSOR OF JURISPRUDENCE, PRINCETON UNIVERSITY, AND VISITING PROFESSOR OF LAW AT HARVARD UNIVERSITY

Mr. GEORGE. Thank you, Chairman Roskam. Ranking Member Lewis, honorable Members of the Committee, I am delighted to be here, and glad that you are holding this hearing.

In my written testimony I go into some detail, based on my 31 years of experience teaching at Princeton and at Harvard, about what I believe the causes of campus illiberalism are. In my testimony this morning I want to focus more on what I regard as the solutions. How do we solve the problems?

In the written testimony I identify the ways in which a lack of viewpoint diversity among faculty on college campuses abets the problem of campus illiberalism, and I think viewpoint diversity is actually the solution. And I want to give a couple of examples this morning of the value of viewpoint or intellectual diversity on campuses.

One is the James Madison program at Princeton, which I have the honor to direct. The program was founded 15 years ago, and its impact on the intellectual culture of Princeton by helping to bring viewpoint diversity to our community has really been remarkable. It gives me enormous satisfaction that this opinion of mine is shared by many of my liberal colleagues who share none of my other opinions. They praise the Madison program for turning what might have been campus monologues into true dialogues, benefiting everybody in the process. The presence on campuses of initiatives like the Madison program ensure that students will hear a wide range of opinions from thoughtful and accomplished scholars.

Diversity of opinion confers a great benefit on an intellectual community. It ensures that people cannot simply suppose that everybody in the room shares the same assumptions or holds the same views. People know that they have to defend their premises because those premises will be challenged. That makes for a deeper, more serious kind of intellectual engagement, a kind that profoundly enriches the intellectual life of the entire community.

Now, the second example is the experience I have had of teaching with my friend and colleague, Professor Cornel West. Professor West is a man of the left. I am on the conservative side of the political spectrum. But we regularly teach together at Princeton. Our most recent seminar included readings from Sophocles, Plato, St. Augustine, Marx, Mill, Newman, Kierkegaard, Hayek, Solzhenitsyn, John Dewey, C.S. Lewis, Reinhold Niebuhr, and Gabriel Marcel. What happens in our seminars is magical, and the impact on our students is amazing.

What you have here is a genuine collaboration. Professor West and I cooperate across the lines of ideological division and political difference in the common project of seeking truth, seeking knowledge, seeking wisdom, engaging with each other and with our students in a serious, respectful, civil manner, striving to understand each other and to learn from each other, treating each other not

as enemies, despite our differences, but as partners in the common project of seeking truth, seeking knowledge, seeking wisdom.

Whether the readings for the next meeting of our seminar are Machiavelli's *Prince*, Tocqueville's *Democracy in America*, Du Bois' *Souls of Black Folks*, Gramsci's *Prison Notebooks*, or Strauss' *Natural Right and History*, we can't wait to be in the classroom every week with our students, and our approach is the opposite of antiquarian; we look for the timeless meaning, but also the contemporary significance of the text we assign. We consider existential, moral, religious, and political questions, including contemporary political questions that are important to us and to our students in the context of the readings.

And here is what really matters. The students learn. And they learn how to learn. They learn to approach the intellectual and moral matters that we are considering critically, engaging the most compelling points to be adduced in favor of the positions on both sides of the question. They learn the value and importance of mutual respect and civility. They learn from two guys with some very strong opinions, neither of whom is shy about stating those opinions, that the spirit of truth-seeking, like the spirit of liberty, in the famous words of the great jurist, Learned Hand, "is a spirit open to the possibility that one may, in fact, be wrong."

Let me be a little more specific, because what Professor West and I do really is, I believe, part of the cure for campus illiberalism. I have prided myself for my entire career on being a teacher who can represent the views of the other side very, very well, so that I am not indoctrinating my students. And Professor West feels the same way. He feels he can present the views of the other side very well, and he does a great job.

But what we have learned in the seminar is neither of us can do it as well as we can do it when we are together. And what that teaches me, whether two professors are together in a classroom, or whether they are just in separate courses around the campus, is that students can't really learn and appreciate the process of learning and the need to hear diverse viewpoints unless they have diversity of viewpoint among the faculty on campuses.

Thank you very much.

[The prepared statement of Mr. George follows:]

Testimony of Robert P. George

Colleges and universities have three fundamental purposes: the pursuit of knowledge; the preservation of knowledge securely obtained; and the transmission of knowledge. Of course, there are other desirable ends that colleges and universities legitimately seek while also pursuing these purposes, but these three are the fundamental, constitutive, defining purposes of academic institutions. All the other things such institutions legitimately do are founded upon them, and anything they do that undermines these purposes they should not be doing. So, for example, though I support college athletics, I support them only insofar as they do not damage the academic program—the transmission of knowledge. When, or to the extent, that they harm the academic program, they need to be reformed or, if reform isn't feasible, abolished.

There are certainly colleges and universities today, as in the past, which place too much emphasis on athletics, to the detriment of the academic program. But athletics are not the greatest threat to the integrity of our colleges and universities today. A far greater and graver threat is posed by the politicization of the academy. The problem is most vividly manifest in the phenomenon of campus illiberalism. By that, I mean the unwillingness of so many members of college and university communities to entertain, or even listen to, arguments that challenge the opinions they happen to hold, whether the opinions have to do with climate science, affirmative action and racial or ethnic preferences; abortion and the sanctity of human life; welfare policy; marriage and sexual morality; U.S. foreign and defense policy; the international economic order; or the origins of human consciousness. Speaking invitations to dissenters from campus orthodoxies are not often issued. Or, if they are issued, dissenting speakers are sometimes “disinvited” under pressure from opponents of their views. Or, if they

are not disinvited, they may be pressured to withdraw under the threat of disruptive forms of protest. Or, if they do not withdraw, they may be interrupted by abusive protestors and even shouted down. And it is not just visitors to campuses. Faculty and student dissenters within campus communities are subjected to abuse and intimidation. Efforts are made to ensure that they are denied opportunities to speak their minds or are intimidated into silence.

I do not wish to paint with too broad a brush here. The situation is better or worse at different institutions. As it happens, it is not at all bad at my own institution. I am in my 31st happy year at Princeton University, where I have never been subjected to intimidation or abuse. But anyone who is paying attention knows the cases that I have in mind at colleges and universities around the country.

But in referring to these cases of campus illiberalism you may have noticed that I spoke of this illiberalism as the way the problem I am concerned about “is most vividly manifest today.” In other words, the

denial of speaking opportunities, the disinviting of speakers due to their opinions, the disruption of meetings and shouting down of dissenting speakers, are what get the attention of the public. But these are merely some *manifestations*. The core of the problem is this: Many institutions are letting the side down when it comes to the transmission of knowledge by failing to ensure that our students, at every level, are confronted with, and have the opportunity to consider, the best that is to be said on competing sides of all questions that are in dispute among reasonable people of goodwill. They are permitting prevailing opinions on campus to harden into orthodoxies, orthodoxies that go largely unchallenged, leaving students with the false belief that there are in fact *no disputes* on these matters among reasonable people of goodwill. At the core of our problem is the toxic thing that provides an environment in which illiberalism flourishes and can be expected to manifest itself in the ways it manifests itself today, namely the phenomenon of groupthink.

We fail to understand the depth of problem, or appreciate the danger it poses to intellectual life, if we take a static view of knowledge, thinking of it as information that is passed into the mind of the recipient who records it there and draws upon it as needed. This is worse than an oversimplification. The transmission of knowledge very often goes beyond the acquisition of information (or skills) and requires the engagement of the knowledge seeker with competing perspectives and points of view. It also requires certain virtues, including open-mindedness, respect for what Mill called “liberty of thought and discussion,” intellectual humility—humility of the sort one can possess only insofar as one appreciates, and not merely notionally, one’s own fallibility—and love of truth. It is the task of colleges and universities, precisely as institutions of learning, to expose students to competing points of view and to foster in them those virtues. That is necessary not because there are no truths to be attained, but, rather, because the pursuit of truth and the deeper appropriation of truths and their meaning and significance, requires it.

You see, then, that whatever is to be said about claims that the predominance of certain views and their proponents on campuses, and the exclusion of others, the problem I am calling attention to here is less about unfairness than it is about the need to avoid and, where it has set in, overcome groupthink in order to fulfill a constitutive purpose of academic institutions. We owe that to our students—whether they like it or not. It is a scandal when students are graduated from liberal arts colleges and university liberal arts programs with no understanding (or, worse yet, grotesque misunderstandings) of the arguments advanced by serious scholars and thinkers who dissent from campus orthodoxies on issues such as those I mentioned a few minutes ago. Even if the opinions the students happen to have acquired in an environment of “political correctness” happen to be true, students’ ignorance of the arguments of dissenters will prevent them from understanding the truth as deeply as they should and actually appropriating it—that is to say, understanding *why* it is so and why

competing views have nevertheless attracted the attention and even the allegiance of serious thinkers.

I believe it was the great jurist Learned Hand who said that “the spirit of Liberty is the spirit of being not too sure one is right.” In making that point, Hand was not endorsing radical skepticism or relativism or anything of the sort. Rather, he was pointing to the need for the virtue of intellectual humility in light of the inescapable reality of human fallibility. His focus was on the need for that recognition and its corresponding virtue in the project of establishing and maintaining republican government and respect for freedom. But what he says about the spirit of liberty is also true of the spirit of truth seeking—a sense of one’s own fallibility, a sense that one could be wrong, even in one’s basic premises and most fundamental beliefs, an openness of mind, a willingness to entertain criticism and to engage critics, all of these things are essential to the truth seeking project, too. And that

means that they must be cultivated in institutions whose mission includes the pursuit and transmission of knowledge.

That is not to say that we should not be advocates of our points of view, or that we should not be engaged politically. I would be a gross hypocrite, at best, if I were to suggest any such thing. I myself am highly engaged politically. Now there *are* people who see political engagement as incompatible with the scholarly vocation. My friend Harry Frankfurt, the distinguished philosopher, inclines to that view. But he has not persuaded me. So I have no problem with scholars speaking out on political issues and getting involved in political causes. But politically engaged scholars, like all scholars, need to be highly cognizant of their own fallibility—even on matters about which they care deeply, and even when it comes to causes in which they are profoundly emotionally invested. Even as advocates, we must cultivate intellectual humility and a willingness to entertain the other guy's arguments in a serious way. One must never imagine that one cannot

possibly be wrong about this or that cherished conviction, or that one's political adversaries and intellectual critics cannot possibly be right. That is fatal to the truth-seeking enterprise.

I think the proper attitude for us to hold is the attitude Plato teaches us to adopt, especially in his great dialogue we know as *Gorgias*. Socrates' attitude in that dialogue strikes me as exactly the one we need to emulate if we are to be good scholars and teachers. We must always be on the lookout for, and be open to, the true friend, that is to say, the person who will confer upon us the inestimable benefit of showing us that we are in error, where in fact we are in error. The true friend, in correcting our mistakes, does us the very best service. We need to see that, and we need to help our students to see it. The person who sees his intellectual adversary as an enemy to be defeated, rather than as a friend joined with him dialectically in the pursuit of a common aim, namely, knowledge of the truth, is already off the rails. He is in grave danger of falling into the ditch of sophistry.

So openness to argument, to having one's premises and most fundamental beliefs and values challenged, is vitally important to the knowledge-seeking mission that defines liberal arts institutions (and professional schools that share the knowledge-seeking aspirations of liberal arts institutions) as the kinds of things they are. A spirit of openness to argument and challenge, where it flourishes in an academic culture, is what immunizes academic institutions against groupthink and chases the groupthink away when it comes knocking at the door.

Part of the problem, of course, is that once groupthink has taken hold, folks who are caught up in it don't recognize the problem. When is the last time you met somebody who said, "yeah, you know what, my problem is that I'm caught up in groupthink. I tend to just think like everybody else around me thinks." I've heard someone say that only one time in my life—and she didn't put it quite that starkly. The trouble with groupthink is that when you're in it, you generally don't know

you're in it. You may realize that not everyone shares your views, but you will suppose that those who dissent from them are irrational or ill-motivated. You will imagine that anyone who disagrees with you is a rube or a bigot or a tool of nefarious interests—a fool or a fraud. When someone is in groupthink, he could pass a lie detector test claiming that he is not in groupthink. But that doesn't mean he's not in groupthink. And wherever ideological orthodoxies settle into place and are not subjected to serious questions and challenges, you have to worry about groupthink setting in. And that's true whether or not campus illiberalism manifests itself in the more visible ways we are now seeing so frequently, with dissenting speakers being excluded from campus or being shouted down, or whatever.

Now it seems to me that viewpoint diversity or what we might call in an academic setting intellectual diversity has its value as a kind of vaccine against groupthink, and as an antidote to groupthink when it begins to set in. Diversity of views, approaches, arguments and the like is the

cure for campus illiberalism. People who have the spirit of being not too sure that they are right, people who want to be challenged because they know that challenging and being challenged are integral and indispensable to the process of knowledge-seeking, such people (whatever their own personal views) will want intellectual diversity on campus in order for the institution to accomplish its mission.

Now of course we all know that it's pretty hard to get this intellectual diversity. And I think there are a number of reasons for that. While in my own experience it's true, and some of my more liberal colleagues tell me that in their experience it's true, that there is sometimes blatant, conscious, obviously deliberate discrimination against people who dissent from campus orthodoxies in hiring and promotion, I happen to think that blatant, conscious, deliberate discrimination is not the heart of the problem.

In fact, I think conscious, deliberate discrimination, though plainly it exists and needs to be dealt with, is *comparatively* rare. I believe the more fundamental challenge is something else.

In this vale of tears, we human beings, fallen and frail creatures that we are, have a lot of trouble appreciating meritorious work and even good arguments when they run contrary to our own opinions, especially when we're strongly emotionally attached to those opinions. As I see it, this isn't a liberal problem, or a progressive, or a left wing problem. It's a human nature problem. Anytime an intellectual or political orthodoxy has hardened into place—it doesn't matter whether it's a left wing orthodoxy or a right wing orthodoxy—it's going to be very difficult for a lot of people to draw the distinction between "work I disagree with despite its being really very good and challenging, and interesting, and important," and "work that goes contrary to what I just know to be true on issues that are important and critical to me and bound up with my sense of who I am as a, fill in the blank: [progressive, conservative,

feminist, libertarian, Christian, atheist, or whatever].” People will experience challenges to the dominant opinions as outrageous attacks on truth, indecent assaults on essential values, threats to what is good and true and right and just, intolerable violations of the norms of our community.

Now among my fellow critics of progressivism there are those—perhaps the majority—who disagree with my claim that the problem is a human nature problem, not a problem with the particular ideology that happens to dominate contemporary academic culture. The eminent historian of the Enlightenment Alan Kors of the University of Pennsylvania, with whom I almost always find myself in agreement, and I once debated this question for a few minutes on a radio broadcast on which the two of us were being interviewed. Professor Kors argued that the fundamental problem is, in some essential way, a left-liberal problem—a problem with progressive ideology itself—not a problem rooted in what in other circumstances we might call original sin. He

maintained that the dominant political-cultural perspective on campuses today is inherently illiberal. Perhaps he is right about that. I remain unconvinced. Still, I think that even if Professor Kors is right about the inherently illiberal nature of campus progressivism, it is also true that there is a human nature problem that we need to bear in mind—a problem that can be counted on to arise and to threaten the integrity of intellectual life anytime there is an absence of dissenting opinions against an ideological orthodoxy in an academic institution—especially when it afflicts *most* academic institutions, and most especially when it prevails at the wealthiest, most prestigious, and therefore most influential ones.

So I ask myself the question: Well what should we do? Of course, as a dissenter myself, and a member of a tiny minority, I'm not in a position of having much power to do anything. But I would say something to my friends who are on the more liberal or progressive side of the ideological street, and who perceive the problem as I do, and who think

something needs to be done about it. I would say, well, number one, of course, we need to expose and protest against any *conscious* discrimination based on viewpoint; and number two, by both precept and example, we need strongly to encourage our colleagues and students to be rigorously self-critical.

We need to encourage people to be self-critical in ways that would enable them honestly to say, as I might say about the work of, for example, my colleague at Princeton, Peter Singer. “Well, you know, I’m really scandalized by his defense of the moral permissibility of infanticide, but there’s an argument he makes that’s got to be met. And the burden is on me to make the argument that our dignity as human beings comes by virtue of our humanity—our status as rational creatures, beings possessing, at least in root form, even in the earliest stages of development, the capacities for the types of characteristically human activities that give human beings a special kind of standing and inviolability. The burden is on me in other words to meet his challenge.

I want my colleagues on the other side to take the same position about work by more conservative scholars, especially in these hot button areas. But I acknowledge that it's hard to do. And it's especially hard to do when orthodoxies have hardened into place and one is not even hearing arguments against one's own positions. And when one is not hearing them, and everybody one knows, and everybody in one's circle, tends to think the same thing about that body of issues, no matter how much diversity there is on other stuff, we're likely headed for groupthink.

When one is hearing the same thing from everyone whom one respects—when one is being reinforced in one's own opinions by all one's friends and colleagues, whether one is a student or faculty member—the motivation to think more critically tends to be very hard to work up. It really is. Working it up is so much easier when one is regularly, in the normal course of things, being challenged by thoughtful people who do not always see things just as one does

oneself. So it's best for us not to get ourselves into this fix in the first place by permitting ideological orthodoxies to form on college and university campuses. But if they have formed, then our challenge is to help our colleagues to appreciate work—and be willing to say that they appreciate work—that is meritorious even when they do not agree with the arguments or positions being advanced.

I want to give a couple of examples of the value of viewpoint, or intellectual diversity, again from my own experience. One is the James Madison Program at Princeton University, which I have the honor to direct. The program was founded 15 years ago. Its impact on the intellectual culture of Princeton, precisely by bringing viewpoint diversity into our community in a serious way, has been remarkable. It gives me enormous satisfaction that this opinion of mine is shared by many of my liberal colleagues who share none of my other opinions. They have praised the Madison Program for turning what might have been campus monologues into true dialogues—benefitting everybody

in the process. The presence on campus of an initiative like the Madison Program ensures that there are people around who think different things, even about fundamental issues that everybody cares about, and which many people assume all academics are on one side of.

That's great, because it means that in general discussions across the university, and not just at the Madison Program's own events, people cannot simply suppose that everybody in the room shares the same assumptions or holds the same opinions. People know that they have to defend their premises—because they will be challenged. That makes for a different, and much better, and more serious, kind of engagement—a kind of engagement that profoundly enriches the intellectual life for the entire community.

The second example, again from my own experience, is the experience I've had teaching with my dear friend and colleague Cornel West. Now Cornel and I really are on opposite sides of the ideological street. But

we regularly teach together at Princeton. Our most recent seminar included readings from Sophocles, Plato, St. Augustine, Marx, Mill, Newman, Kierkegaard, Hayek, Solzhenitsyn, John Dewey, C.S. Lewis, Reinhold Niebuhr, and Gabriel Marcel. What happens in our seminars is magical and the impact on our students is amazing. What you have here is a genuine collaboration. Professor West and I collaborate across the lines of ideological and political difference in the common project of truth-seeking, knowledge-seeking, wisdom-seeking, engaging with each other and our students in a serious, respectful, civil manner, striving to understand each other and learn from each other, treating each other not as enemies but as partners in the dialectical process of seeking truth, knowledge, wisdom.

Whether the book for the week is Machiavelli's *Prince*, Tocqueville's *Democracy in America*, DuBois' *Souls of Black Folk*, Gramsci's *Prison Notebooks*, or Strauss's *Natural Right and History*, all of which we have taught in previous seminars, we can't wait for Wednesdays to come

each week so that we can be back in the classroom together. We have a wonderful time together, which is nice, and we learn from each other. Our approach is the very opposite of antiquarian: We look for the timeless meaning and contemporary significance of the texts we assign. We consider existential, moral, religious, and political questions that are important to us and our students in the context of the writings we examine.

And here is the thing that really matters: The students learn, and they learn how to learn. They learn to approach intellectual and political matters dialectically—critically engaging the most compelling points to be adduced in favor of competing ideas and claims. They learn the value and importance of mutual respect and civility. They learn from two guys with some pretty strong opinions, neither of whom is shy about stating them publicly, that the spirit of truth-seeking, like the spirit of liberty, is a spirit open to the possibility that one is in serious error.

Let me be more specific. I want you to understand what I'm saying here because what Cornel and I do really is, I believe, part of the cure for campus illiberalism. Now, I've always prided myself as a teacher on being able to represent, accurately and sympathetically, moral and political views I myself do not share. So if I'm teaching about abortion, or something having to do with affirmative action, or marriage, or religious freedom, or campaign finance and the First Amendment, or the Second Amendment right to bear arms, or whatever it is, in my constitutional interpretation classes or my civil liberties classes, I like to think that if someone came in who happened not to know which side I was on, they wouldn't be able to figure it out from my presentation of the competing positions and the arguments for and against them.

Now, that's not because I think professors should hide their views or anything like that. Outside the classroom, I certainly do not hide my views! It's just that I don't think that classrooms should be used to proselytize or push a moral or political agenda or recruit adherents for one's causes. There is a place for catechism classes and the like, but

that place is not the college or university classroom. The classroom is for exposing students to the best that is to be said for the competing views so that they can learn to think more carefully, critically, and, perhaps above all, for themselves. So, as I say, that is why I always, without fail, regardless of how much I care about an issue, present the very best arguments, not only for my own positions but for positions I strongly reject.

What I have learned in teaching with Cornel, though, is this—as good as I think I am at this, I am not good enough. The evidence for that is simply that time after time in the course of our seminars I have found Cornel saying something, or making a compelling point in response to a point that I or one of the more conservative students has made, that simply would not have occurred to me—a point that needs to be seriously considered and engaged. Had Cornel not been there, even doing my best to represent his side, the point would not have been made, and the benefit to be conferred on all of us in grappling with it

would not have been gained. And Cornel tells me that he has had precisely the same experience, time and time again. He has found me making points or developing lines of argument that, he says, he has never considered and which simply would not have occurred to him, despite the fact that he shares my aspiration to represent as fully and sympathetically as possible positions and arguments from across the spectrum.

Now that, it seems to me, is a very good argument for promoting intellectual diversity. By the way, I think it's a very good argument for team teaching. I think team teaching is a wonderful thing to do, especially if you have people who disagree about things teaching together. And the things in dispute do not have to be political things. The disagreements might be about the proper interpretation of Shakespeare or the Bible, or any of a range of other subjects, especially (but not exclusively) in the humanities and social sciences. But it's a very valuable thing to do, and more of it should be done. But the truly

important thing is this: A healthy intellectual milieu is one in which students and scholars regularly encounter competing views and arguments, where intelligent dissent from dominant views is common and the value of dissent is understood and appreciated, where beliefs that can be supported by arguments and advanced in a spirit of goodwill are common enough that they do not strike people as reflections of ignorance, bigotry, or bad will, and people who do not share them do not experience them—because they seem so alien—as personal assaults or outrages against the community’s values. It’s great to have competing views among instructors in the classroom; I realize, however, that such a thing is a luxury that most institutions cannot afford to provide on a regular basis. But diversity among faculty on campus, even if not in the same classroom, helps to cure campus illiberalism. It voids the tendency of people—students and faculty alike—who hold positions that happen to be dominant to suppose that the college or university is theirs, and is for people like them, not for people who disagree with them. It sends a message that all who seek

knowledge of truth and wish to pursue it in a spirit of civility and mutual respect are welcome here as insiders sharing the truly constitutive values and goals of the community, not outsiders who are, at best, merely to be tolerated as if they were present in the community only on sufferance.

Am I advocating “affirmative action” for conservatives? Not at all. I’m advocating attitudes and practices that will cure campus illiberalism without the need to “recruit conservatives” or give conservative scholars preferences in hiring and promotion. If conscious and unconscious prejudice against people who dissent from prevailing orthodoxies were defeated, if intellectual diversity were truly valued for its vital contribution to the cause of learning, the hiring problems would take care of themselves. A historian such as Allen Guelzo would be at Yale or Stanford—hired by vote of a group of people few or none of whom happened to share his conservative politics or evangelical Christian faith. Harvard or the University of Chicago would be offering

to triple Jim Ceaser's salary to induce him to move from Charlottesville to Cambridge or Hyde Park. We would not have departments of sociology or politics or history with forty-three liberals and one conservative (or, more likely, one libertarian). Nor would we have the embarrassments, and the tragedy, of campus illiberalism.



Chairman ROSKAM. Thank you.
Professor Hill.

**STATEMENT OF FRANCES R. HILL, PROFESSOR OF LAW AND
DEAN'S DISTINGUISHED SCHOLAR FOR THE PROFESSION,
UNIVERSITY OF MIAMI SCHOOL OF LAW**

Ms. HILL. Thank you, Chairman Roskam. Good morning, Mr. Lewis. And to the Members of the Committee, thank you for inviting me to testify today regarding the tax issues implicated in the question before the Committee.

The issue, as I see it as a matter of tax law, is whether speech or action of particular officials or employees or students or other persons affiliated with the university are properly treated as speech or action by the university as a tax-exempt entity. Because, as we all should fully understand, section 501(c)(3) does not apply to the students, the faculty, or the administrators. It applies to the university as a tax-exempt entity. So the question before us is whether our various affiliations with the university mean that our various actions taken in various capacities of our lives will be attributed to the university as a tax-exempt entity.

This, of course, to a tax lawyer, immediately raises the need to discuss the tax concept of attribution. You must have looked at this testimony and thought, "Oh, my goodness, I am back in law school again." And this is part one of the testimony that takes you through a range of Supreme Court cases that establish two important points, I think, for the Members of this Committee today.

One is there is in tax law a presumption that entities are separate. It is called the separate identity principle. So if a corporation has a subsidiary and it owns 100 percent of the stock, never mind. The subsidiary is separate. The same is true at a university. If it operates through many entities, all the actions of each entity will not be attributed to the core university.

The second principle is that the separate identity principle can be overcome when there is evidence of agency, where one entity is the agent of another. And I have listed, in professorly, tax-lawyerly fashion, a variety of authorities and Supreme Court determinations relating to this issue.

But the heart of our matter today is part two of the testimony. When is there attribution of the actions of those of us affiliated with universities to our university? Now, there may be no actual instance at all where one or another administrator at a university wants to even acknowledge that we are part of his university. But they, of course, have little choice to do that.

A university is a group of broadly affiliated people filling broadly different roles. So the university acts only through the speech and activity through each of us. The question then before us is whether our various positions in the university support the separate identity principle or lead to a presumption of agency, meaning that we could bind the university and be taken as speaking for the university.

The IRS has made it abundantly clear that only in the rarest of circumstances would a student be considered the agent of a university, and they have issued revenue rulings dealing with a political science course that involved going out and working in campaigns.

And as long as the students could choose which campaign they wanted to work in and fulfill the other requirements of the course, like writing a paper—which doesn't seem so onerous—this is not attributed to the university.

Even more interesting is the student newspaper. Student newspapers endorse—are free to endorse, under this guidance from 1972, candidates for public office, and that is not attributed to the university.

So, the testimony goes through other instances where the IRS has written quite clear guidance. It is interesting to me that the guidance that the IRS indicates that suggests the greatest danger of attribution is where senior administrators take positions and do not clearly state that they are acting in a personal capacity, but try to maybe act for the university.

And these are the references to a president of a university who wrote a "My View" column in a university presentation, and endorsed a candidate for elective office. That is a problem, because when a president of a university is speaking, everything that president does in an official publication of the university will be attributed to the university, unless there is a broadly public disavowal, as public as that statement.

So, I would urge the Committee today to look carefully at all the guidance that is already out there—some of it is nonprecedential, but all of it is widely used in the tax profession—and consider what can be achieved by having organizations make sure they are informed of what is already there, and take steps to educate their own lower-level administrators or their president about what they can and cannot do. Students can do almost anything. Thank you.

[The prepared statement of Ms. Hill follows:]

**Committee on Ways and Means Subcommittee on Oversight
Of the United States House of Representatives**

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

**Statement of Frances R. Hill
Professor of Law and Dean's Distinguished Scholar for the Profession
University of Miami School of Law
Coral Gables, Florida**

Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, provides that an organization will be exempt from federal taxation if it is organized and operated “exclusively” for certain enumerated exempt purposes, including “education” and “which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” Section 501(c)(3) focuses on the activities of the organization. Exemption from taxation applies to the university. Yet, an entity acts and speaks only through the individuals affiliated with it, whether as employees or students.

The issue before the Subcommittee today is whether the speech or actions of particular officials or employees or students or other persons affiliated with a university are properly treated as speech or action by the university as a tax-exempt entity. Under what circumstances, if any, will the actions of an individual or group be attributed to a university for purposes of determining whether the university is operating as an organization described in Section 501(c)(3)? When an individual or a group affiliated in some way with a university speaks, does that speech remain the speech of the individual or group or does it become the speech of the university for purposes of Section 501(c)(3)?

This issue implicates the concept of attribution. Part I of the testimony addresses the concept of attribution in tax law. Part II discusses the concept of attribution as it has been applied in guidance from the Internal Revenue Service (the “Service”) on the question of attribution of political speech by individuals affiliated with an exempt organization to the organization itself.

I. Exemption and Attribution

Issues of attribution arise in complex structures of multiple entities. The core principle is that each entity maintains its separate identity for federal income tax purposes. Tax planning using complex structures rests on maintaining affiliation among entities while avoiding attribution of activities from one entity to one or more other entities. Exempt entities, including universities, now operate as complex structures of multiple types of exempt and taxable entities. These various entities will be controlled by the board of the core exempt entity through its

authority to appoint the boards of directors of the component exempt entities and ownership of a controlling equity interest in taxable entities. This kind of affiliation does not support attribution of the activities of the affiliated organizations to the core exempt entity. This separate identity principle was defined for federal income tax purposes in *Moline Properties v. Commissioner*, 319 U.S. 436 (1943).

An entity acting as the agent of the entity that controls it can provide an exception to the separate identity principle. This was the issue in *National Carbide Corp. v. Commissioner*, 336 U.S. 422 (1949). Although the Supreme Court held that the facts in *National Carbide* did not support a determination that the subsidiaries were agents of the parent corporation, it did identify “some of the relevant considerations in determining whether a true agency exists.” *National Carbide Corp. v. Commissioner*, 336 U.S. at 437. The six factors listed by the Court are: (1) whether the subsidiary operates in the name and for the account of the parent as principal; (2) whether the subsidiary has the ability to bind the principal by its actions; (3) whether the subsidiary transmits money received to the principal; (4) whether the subsidiary uses employees and assets of the parent; (5) whether the subsidiary’s relationship with the principal depends on its ownership by the principal; and (6) whether its business purpose is to conduct the normal duties of an agent. The Court emphasized that agency must be determined without reliance on factors of ownership and control. *National Carbide Corp. v. Commissioner*, 336 U.S. at 439. Mere affiliation or control does not establish agency. This principle was further consolidated in *Commissioner v. Bollinger*, 485 U.S. 340 (1988), which interpreted *National Carbide* as consistent with the separate identity principle of *Moline Properties*.

The separate identity principle applies in the case of exempt entities as well as the case of taxable entities. Formal control expressed in the authority to appoint another organization’s board of directors does not in itself support attribution of the controlled organization’s activities to the controlling exempt organization. Attribution arises from evidence of control of daily operations. Mere control over policy is distinguished from the requisite operational control. The overlap of officers provides evidence of the kind of operational control that results in attribution. Private Letter Ruling 8606056 (Nov. 14, 1985). Some overlap of officers will not support attribution if the majority of the board of directors consists of outside directors. Private Letter Ruling 8352091 (September 30, 1983). Sharing facilities and services rarely support attribution. The relationship between affiliation and attribution is discussed in greater detail in Frances R. Hill and Douglas M. Mancino, *Taxation of Exempt Organizations* at Chapter 27, “Complex Structures” (Thomson Reuters/Warren, Gorham & Lamont 2002 with cumulative supplements published twice each year).

The principles of attribution that have long applied in the context of the complex structures through which exempt entities, including most universities, operate are analytically similar to the principles that preclude attribution to an exempt entity of the speech and action of individuals affiliated with it. As discussed in the following section, individuals do not forego their rights to speak by mere affiliation with an exempt entity, including a university. By the same token, an exempt entity has no basis in Section 501(c)(3) for seeking to claim that any speech by any individual affiliated with it in any capacity will be attributed to the exempt entity.

and could, in the case of certain political speech, jeopardize the exempt status of the exempt entity.

II. Attribution of Speech or Actions of Individuals or Groups Affiliated with an Exempt Entity

In nonprecedential but widely relied upon guidance, the Service has stated unambiguously that “[t]he prohibition on political campaign activity applies only to IRC 501(c)(3) organizations, not to the activities of individuals in their private capacity.”¹ At the same time, the Service noted that “since an IRC 501(c)(3) organization acts through individuals, sometimes the political activity of an individual may be attributed to the organization.” 2002 CPE Text at 364. In general, students are more likely to be acting in their private, personal capacity, while senior officials of a university will be acting in their official capacities or at least appear to be doing so. Issues involving students are likely to center on their access to university resources, while issues involving university officials are likely to center on the greater scope of their official role and thus relatively smaller role for actions taken in their private capacities.

As in the case of the complex structures discussed in Part I, affiliation does not itself trigger attribution of the speech by an individual or a group to the exempt entity. The Service has developed practical principles that can be applied in a number of situations involving political speech by individuals or groups affiliated with exempt organizations, including universities.

A. Political Speech by Students or Student Organizations

The Service has taken the position 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 of a school official.” 2002 CPE Text at 365.

The two revenue rulings issued by the Service dealing with political speech by students or student organizations both find that attribution does not arise simply from their affiliation with the university as students even if they use some university resources in connection with their political speech. Revenue Rule 72-512, 1972-2 C.B. 246 deals with a political science course that requires students to participate in the campaigns of a candidate of their own choosing. The course is open to any student. It is offered for academic credit and is graded. It consists of several weeks of work in the classroom followed by two weeks of participation in a political campaign of a candidate of the student’s choice. Revenue Ruling 72-512 states that “[t]he university does not influence the student in his choice of a candidate or control his campaign work.” Revenue Ruling 72-512 concluded that “this university is not participating in political campaigns on behalf of candidate for public office within the meaning of section 501(c)(3) of the Code.” Revenue Ruling 72-512 explained the result in the following terms:

The course described above is exclusively educational in nature since it is provided as part of the university’s political science program solely for the purpose of improving or developing his capabilities.

The student activities in question represent a bona fide course of conduct in fulfillment of a formal course of instruction conducted by the university. Where the extent and manner student participation in the actual political process in such cases is reasonably germane to the course of instruction, the fact that such course is a part of the university's curriculum and that university personnel and facilities are employed in its conduct does 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 within the intendment of section 501(c)(3).

In subsequent nonprecedential guidance, the Service commented that the conclusion in Revenue Ruling 72-512 would have been different if the students had not chosen the campaigns that they worked for in the course. The Service observed that "[h]ad the faculty members specified the candidates on whose behalf the students should campaign, the actions of the students would be attributable to the university since the faculty members act with the authorization of the university in teaching classes." 2002 CPE Text at 365.

Revenue Ruling 72-513, 1972-2 C.B. 246 deals with a student newspaper that endorses candidates for public office. The university provides office space and financial support for the publication costs. Several professors at the university serve as advisers to the student editors. Revenue Rule 72-513 states that

Editorial policy is determined by a majority vote of the student editors. Neither the university administration nor the advisors exercise any control or direction over the newspaper's editorial policy. A statement on the editorial pages makes it clear the views expressed are those of the student editors and not of the university. In customary journalistic manner, from time to time there are editorials taking a position on pending or proposed legislation and candidates for public office.

In this ruling, too, the Service determined that the university was not attempting to influence legislation or participate in political campaigns on behalf of candidates for public office. The Service reasoned as follows:

The publication and dissemination of the editorial statements in question are acts and expressions of opinion by students occurring in the course of bona fide participation in academic programs and academic-related functions of the educational institution. In such circumstances, the fact that the university furnishes physical facilities and faculty advisors in connection with the operation of the student newspaper does not make the expression of political views by the students in the publishing of the newspaper the acts of the university within the intendment of section 501(c)(3) of the Code.

These two situations do not specifically address the case at the center of this Hearing, but they do provide relevant guidance. The facts in this matter provide no basis for attribution of the student's political campaign activity to the university. The student did not claim any authority to

speak for the university. There was thus no basis for concern that the student's political campaign activity could reasonably be attributed to the university, which is the only way that political campaign activity undertaken by an individual affiliated with a university could jeopardize the university's exempt status. None of the principles identified in *National Carbide* as creating an agency exception to the separate identity principle of *Moline Properties* apply to the student distributing leaflets at his university. The requirements of Section 501(c)(3) provide no basis for prohibiting political speech by a student under these facts. Although the student had applied for use of a table reserved for student activities, that alone would not have supported attribution of his political campaign activities to the university. He never claimed any status at the university other than the status of a student. This status does not create the kind of implied authority that would support attribution of the student's political activities to the university. If a student newspaper operated by students but using significant university resources, including the name of the university in its masthead, can endorse candidates for public office in its editorials based on a vote of the student editorial board without having this action attributed to the university as was the case in Revenue Ruling 72-513, then certainly one student distributing leaflets urging the election of a clearly identified candidate for public office will not be attributed to the university and thereby jeopardize the university's exempt status.

B. Political Speech by Faculty Members

Faculty members can certainly engage in political speech in their private capacities, but the scope and nature of their private capacity when fulfilling their teaching roles and when using the array of university resources routinely available to them raises issues. Faculty members cannot under the ordinary scope of their authority bind the university to a course of action. If faculty members also occupy roles in academic administration, such as roles as department chairs or deans, then they have sufficient authority to speak for the component of the university for which they have administrative responsibility.

Issues raised by faculty status involve the scope of their authority as teachers. This does not give faculty members authority to use their classrooms to support or oppose clearly identified candidates for public office. Faculty may not use their classrooms to endorse or urge the election of particular candidates. Faculty members should not signal their support by displaying indicia of their personal political choices in their classrooms. Time spent with students in a classroom should focus on the material that students enrolled in the course to learn. Using a classroom for political campaigning when the faculty member is acting within the scope of his or her authority in the university could well be attributed to the university. A greater problem is that using class time for political campaigning means that class time is diverted from the exempt educational purpose of the university to the private, personal preferences of the faculty member.

A faculty member has access to a range of university resources including business cards and stationery bearing the university's name and logo, a well-equipped office, and staff assistance. All of these assets are provided to a faculty member to enhance performance of the teaching and research that define the scope of their faculty authority consistent with the educational purpose of the university. Diverting any of these resources to personal uses not only

diverts such resources from their use in exempt educational activities but also raises issues of attribution of these non-educational activities to the university.

The university should have administrable policies in place that advise faculty members of these issues. Such policies should also serve as a disavowal of routine, perhaps unintentional, misuse of university resources by faculty members. In more extreme cases, a university needs to disavow the specific behavior of the particular faculty member to avoid attribution.

C. University Administrators

University administrators retain their personal right to become involved in political campaigns in their personal capacity. Delineating the personal capacity of a university president or the dean of a college requires specific action. If a senior administrator wishes to sign an endorsement of a specific candidate, the senior administrator should take care that the use of the university affiliation is accompanied by the disclaimer that the university's name is used solely for purposes of identifying the individual. *See* Revenue Ruling 2007-41, Situation 3. If a senior administrator writes an editorial in an official university publication urging that a particular candidate should be elected, that statement will be attributed to the university even if the president pays for that portion of the cost of producing the publication. *See* Revenue Ruling 2007-41, Situation 4. This example should be interpreted as requiring that a private action such as paying for the portion of the cost of the publication is an insufficient disavowal of a public endorsement. The university's disavowal should be as public as the endorsement.

The positions of senior administrators are particularly sensitive because these senior administrators have the type of broad authority over the operation of a university that is discussed in Part I of this Statement. This authority is similar to the elements of the agency exception to the separate identity principle set forth in the *National Carbide* case discussed in Part I.

Senior administrators are entrusted with the operation of a tax-exempt university in a manner consistent with its exempt educational purpose. It is reasonable but not sufficient to assume that senior administrators understand the potential issues arising from their own behavior. The actions of a senior administrator in endorsing a candidate for public office or the candidates of a particular political party will be attributed to the university and thus require an appropriately public disavowal by the university. Senior administrators are in a position to make significant contributions to the organizations that they lead. They are also in the position of potentially doing significant harm to their universities or other tax-exempt organizations. Tax law offers practical, useful guidance on how to avoid such harm.

D. Boards of Directors and Major Contributors

Other persons who occupy positions of responsibility or who are in a position to influence the actions of a university or other tax-exempt entity should consider carefully the steps required to ensure that they do not invoke their roles or relationships with the university to

support or oppose one or more candidates for public office.

In addition, the board of directors should ensure that senior administrators have developed appropriate policies that ensure that political campaign participation by persons affiliated with the university but acting in their personal capacities are not limited by university policies or actions and should not invoke Section 501(c)(3) inappropriately to do so.

* * * *



Chairman ROSKAM. Thank you, Professor. For the benefit of those who are watching and participating today, we have an email address that we have set up that—we are interested in hearing about cases. So the Committee wants some input. And the email address is *campus.speech@mail.house.gov*. I will repeat that: The email address is *campus.speech@mail.house.gov*. So if you are a student or a faculty member or an administrator, and you have the sense that your free speech has been suppressed on campus, this Subcommittee would appreciate you getting that information to us.

Thank you to the witnesses. You did a great job, in terms of timing, and you were clear and insightful. And now we have an opportunity to inquire of you. And I will recognize Mr. Meehan for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman, and thanks, our distinguished panel, for your various perspectives. I am struggling to get my arms around this issue, so I am—you know, I—Ms. Hill closed her testimony with a statement that students can do almost anything.

And, you know, I am struggling to understand that concept, because it is not so much the ability for students to articulate a political position necessarily on campuses, but it is the sense that the schools themselves—and I recognize there are 650 civil rights attorneys in the Department of Education alone that are holding colleges accountable, to some extent, if for some reason a particular student perceives that another student's speech offends them in some manner. And I am seeing this more and more frequently, and that is the part that I am trying to understand, quite honestly.

This is an interesting month, if you happen to be Irish. And you begin to see things done on college campuses in which they will say, "Saint Patrick's Day, celebrate with a beer." And at what point in time does the student that begins to promote some kind of activity on campus that says, you know, "Come to a Saint Patrick's Day event" that has beer all over it begin to create the image that all Irishmen are drunkards? And I find that offensive. And at what point in time can I step forward and say on this campus, under the speech code, because I find it offensive that your articulation of something that would depict an Irishman as a potential drunk is wrong, and it must be stopped on this campus?

Ms. SEVCENKO, am I missing something in that particular position on college campuses? And under the law, does somebody on a college campus have any different standard of protection than they would if they were walking down a street, to be protected from speech that would be considered to be harassment?

Ms. SEVCENKO. Thank you, Congressman. Let me address a couple of things. One is the difference between public universities and private universities.

Mr. MEEHAN. Let's go with private universities. I am more interested in those that are creating these special codes in addition to—

Ms. SEVCENKO. Well, unfortunately, public universities create them, as well. But, in terms of private universities, they are not directly bound by the First Amendment, but they are bound by the promises that they make. And it is a very rare university that has up on its website disclaimer, "Come here, check your free speech

rights at the door.” They all proclaim, “Come here, experience,” you know, “diversity of ideas, intellectual, rigorous debate,” so on and so forth.

So, to answer your question, in terms of you being able to object to a poster depicting a drunken Irishman, you can do that the minute you see it. You can write a letter to the editor, you can address the group that has put it up. That is what the university is for.

Mr. MEEHAN. But should the university at that point in time require that all students who have participated in the creation of that poster be disciplined for violating my sensitivities?

Ms. SEVCENKO. There is no constitutional right not to be offended. And if the school has promised free speech, then no, the university should not, because then they would be in violation of the promises they have made, and their moral obligation to keep that. There is no bait and switch.

Now, there are a few colleges who have said that, “Community is more important to us than free speech. So when you come here, you need to be very careful about what you say, and you will be disciplined if you say something that offends others.”

Mr. MEEHAN. Would it be any different if I said it was a tequila party, and I was going to wear a sombrero, bring a sombrero?

Ms. SEVCENKO. I mean it doesn’t—the principle remains the same.

Mr. MEEHAN. So speech—and I looked at this, and I tried to—speech, in order to be unprotected, it has to be so severe, pervasive, and objectively offensive and undermining, it detracts from the victim’s educational experience, that the victims, students, are effectively denied equal access to an institution’s resources and opportunities.

I would suggest to you that it is just not any speech that I find offensive which is protected—

Ms. SEVCENKO. Yes. What—yes. What you have just cited is a Supreme Court case.

Mr. MEEHAN. Yes, I did.

Ms. SEVCENKO. *David v Monroe*. So that is the standard that the Supreme Court has set for harassment.

Mr. MEEHAN. And is it any students, or is it a reasonable student—what is a reasonable student’s expectation in that—

Ms. SEVCENKO. It is, yes, an objective standard, so a reasonable person standard. And it has to be pervasive. That is, if somebody says something egregious once, then that probably doesn’t meet the standard. If it happens over and over again, then yes, the university under that standard should step in.

Chairman ROSKAM. Thank you.

Mr. Lewis.

Mr. LEWIS. Thank you very much, Mr. Chairman. I want to take a moment to thank each one of you for being here, and thank you for your testimony.

I am trying to get a sense of whether the stakes for colleges are big, or if this is a minor issue. Professor Hill, what are the stakes for a college or university if it engages in banned campaign activity? What sanction does the Tax Code impose for this type of violation by a 501(c)(3) tax-exempt entity?

Ms. HILL. In this case, Congressman Lewis, the Internal Revenue Code, which prohibits in 501(c)(3) participation or intervention in political campaigns, including the publishing or distributing of statements—any political campaign on behalf of or in opposition to any candidate for public office. But as I have said, one has to run this through whether—the question of whether the university is speaking.

Now, the sanctions in this area are severe. They are an—not just for universities, but all 501(c)(3) public charities, which means they are publicly supported under section 509 of the Internal Revenue Code. And, in that case, what happens if an organization has been engaged in political campaigning is they are in jeopardy of losing their tax-exempt status.

Now, why does that matter so much? It matters for two reasons. If they are not tax-exempt, they lose the subsidy represented by the entities not having to pay taxes. Number two, their contributors lose their section 170 charitable contribution deduction made for contributions to the university.

And so—and that contribution, I will just remark, is deductible on the mere basis of the university or other organization being a 501(c)(3) organization in good standing. So if somebody would want to give a university \$3 million for an endowed chair for a professorship in organic chemistry, they can still give the money, but the organization can only, in a sense, validate the section 170 charitable contribution deduction if the university itself is tax-exempt.

And I will just add that many public universities also seek 501(c)(3) tax-exempt status precisely because their contributors want to see a determination letter from the Internal Revenue Service assuring them, as contributors, that their contribution to the university will be deductible. So it is, on the tax side, a little more complex than just a public-private divide.

So universities care about their exempt status. They care about preserving it. They care about reconciling it with an atmosphere in which students can learn and professors can teach and write, and administrators can do whatever it is that administrators do—we on the faculty often are not quite sure.

[Laughter.]

But nobody, nobody, could do more harm to a university than an ill-informed senior administrator or a willful senior administrator, because of the difficulty of disavowing those acts of political participation.

That is why I said, Congressman Meehan—just to sort of in a sense, address your comment—that students can do almost anything with respect to political advocacy in a nonviolent way, which is certainly what we are talking about today. And the chances of that jeopardizing the exempt status of a university are very low, as the existing guidance so amply and clearly understands.

Mr. LEWIS. Professor Hill, before we run out of time, are you aware of any university losing its tax-exempt status because of campaign activity?

Ms. HILL. Mr. Lewis, I am not. I have not undertaken empirical research on my own on this question. But I think I might have heard about instances of it, although maybe I haven't. But I have not heard of an instance.

Mr. LEWIS. Thank you very much, Mr. Chairman.

Chairman ROSKAM. Mr. Holding.

Mr. HOLDING. Thank you, Mr. Chairman, and I appreciate you holding this hearing. You know, the institutions that we are looking at today, these issues, you know, the institutions and their endowments under 501(c)(3), under the Tax Code, they get enormous taxpayer support. And I think it is clear that we have jurisdiction to look at these issues.

But, Ms. Sevcenko, I want to get you to clarify a few things. Most private schools are tax-exempt under 501(c)(3), correct?

Ms. SEVCENKO. I believe so, yes.

Mr. HOLDING. The—are there any public colleges that are exempt under 501(c)(3)?

Ms. SEVCENKO. Yes, I believe so. But Professor Hill would be better able to address that.

Mr. HOLDING. But most of them are public institutions. They don't have to use 501(c)(3), correct?

Ms. SEVCENKO. Yes, they are exempt under section 115.

Mr. HOLDING. So, when you are talking about the First Amendment and applying it to public colleges, how does the First Amendment apply?

Ms. SEVCENKO. The First Amendment applies to public colleges because they are government instrumentalities. So the First Amendment applies to the States through the Fourteenth Amendment incorporation. And then, because the schools are State government entities, the First Amendment applies to campus.

Mr. HOLDING. Now, when we are talking about the First Amendment, how does it apply to private colleges, as opposed to public colleges?

Ms. SEVCENKO. The First Amendment does not directly apply. That is where we look to the—what the college has said about its own intentions. And there are, in fact, some State courts that have said that if a college promises free expression and then censors a student, that could be considered breach of contract.

Mr. HOLDING. But it is not a First Amendment right, it is a breach of contract.

Ms. SEVCENKO. Yes, because there is a First Amendment right of association, as well, so that if I want to have a college that is the, you know, don't say anything that will offend anyone college, I am able to do that.

Mr. HOLDING. So, are private colleges and universities allowed to restrict speech and political activity on campus? Just to be clear on that.

Ms. SEVCENKO. Yes, yes. I mean, I think Alex here is a perfect example of that.

Mr. HOLDING. So why should tax-exempt private colleges and universities not restrict political activity on campus? That would be toward, you know, their marketing and so forth, as you mentioned.

Ms. SEVCENKO. So why should they not? I mean—

Mr. HOLDING. Why should they not? I mean what would be the reason that they not do that?

Ms. SEVCENKO. Because they were granted tax-exempt status because they have an educational mission. And I think it is deeply ironic that the universities, in an attempt to preserve their

501(c)(3) status, are in fact censoring people, censoring students, which is undermining the very purpose that they are there for.

And this is not a minor problem. We survey every year 450 universities. We look through all of their speech codes. And in our latest spotlight report—a copy here—50 percent of the colleges and universities that we look at have openly unconstitutional speech codes.

Mr. HOLDING. So why do you think they do that? What do you think the impetus is behind the people making those decisions to restrict free speech in a tax-exempt institution?

Ms. SEVCENKO. I think there are various reasons that they do it. Administrators do not like confrontation. They want things to stay, you know, on an even keel. They like to have control, they like to know what is going on. That is why we see the free speech zones—oh, we will just send, you know, troublemakers like Alex here over to that corner, so that they, you know, won't attract attention.

There are government regulations. The Office for Civil Rights at the Department of Education, as you know, has been very active in issuing title IX Dear Colleague letters. They issued a blueprint a couple of years ago, what they called the blueprint, with what we consider to be a blatantly unconstitutional definition of sexual harassment as unwelcome conduct, including verbal conduct of a sexual nature. That can encompass just about anything.

So there are various things going on. But mainly, the administrators, they want to avoid trouble. That is why the general counsels will say, "No, let's just be on the safe side and tell the students not to have political activity, not to campaign for Bernie Sanders, because"——

Mr. HOLDING. Right.

Ms. SEVCENKO [continuing]. "The election will be over soon, they will graduate, but we have to be"——

Mr. HOLDING. Well, thank you very much, and I appreciate the examples that you showed us. And I hope, Mr. Chairman, that we get some participation from folks who have experienced this, and they email into us. Thank you.

Chairman ROSKAM. Thank you.

Mr. Crowley.

Mr. CROWLEY. Thank you, Mr. Chairman. Good morning, and welcome to each of you this morning.

Professor Hill, while the First Amendment prohibits colleges and universities from restricting speech, the First Amendment generally does not apply at private colleges and universities, because the First Amendment regulates only government conduct. Is that correct?

Ms. HILL. Yes.

Mr. CROWLEY. It is kind of similar to the give-and-take most recently by my colleague, Mr. Holding, and with Ms. Sevchenko, is that correct?

Ms. HILL. Well, it is broadly correct. I mean that would—if we go beyond that we are going to fall into the swamp of the State Action Doctrine under the Fourteenth Amendment, which is——

Mr. CROWLEY. But you do agree with Ms. Sevchenko, in terms of her——

Ms. HILL. Yes, I agree with——

Mr. CROWLEY. And Georgetown University is a private university, is that correct?

Ms. HILL. As far as I know.

Mr. CROWLEY. It is a private university.

Ms. HILL. Yes.

Mr. CROWLEY. Georgetown University also has been working with the aggrieved parties in this particular case being discussed today in an attempt to resolve their differences. I am not asking for your comment, I am making a statement of fact.

In fact, Georgetown University—that letter has been entered into the record—to this Subcommittee, informing us that, based on those discussions and a review of their internal policies, the university, Georgetown University, is adjusting their policies to make very clear that all of the members of the community will be able to make reasonable use of the university, the private university and its resources, to express their political opinions.

Additionally, I would like to submit for the record—I don't believe it has yet been submitted—a list of the political speakers and events at Georgetown, a private Catholic college that is not bound, again, by the First Amendment. And you will see a wide variety—diversity of opinions and believes, from Mike Huckabee to Bernie Sanders. And I have that here, Mr. Chairman. I would like to submit that for the record.

Chairman ROSKAM. Without objection, so ordered.

[The submission of The Honorable Joseph Crowley follows:]



GEORGETOWN UNIVERSITY

LIST OF POLITICAL SPEAKERS & EVENTS**Main Campus:**

March 2, 2016	Mike Huckabee (R) – Former Governor of Arkansas, 2016 Presidential Candidate
March 1, 2016	Congressman Mick Mulvaney (R-SC)
February 29, 2016	Congresswoman Grace Meng (D-NY)
February 2, 2016	Congressman Chris Gibson (R-NY)
January 29, 2016	Robert McDonald – Secretary of Veterans Affairs
January 28, 2016	Jon Huntsman (R) – Former Governor of Utah, 2012 Presidential Candidate
January 21, 2016	Gary Soiseth (Mayor – Turlock, CA)
January 21, 2016	Alvin Brown (former Mayor – Jacksonville, FL), Nan Whaley (Mayor – Dayton, OH), Sly James (Mayor – Kansas City, MO), Muriel Bowser (Mayor – DC) & Mick Cornett (Mayor – Oklahoma City, OK)
January 20, 2016	Barry Bennett & Doug Watts (former Ben Carson campaign staff)
January 19, 2016	Ben Rhodes (Assistant to President Obama and Deputy National Security Advisor for Strategic Communications)
December 16, 2015	Vice President Joe Biden (D)
December 1, 2015	S.E. Cupp (NY Times), Congresswoman Marsha Blackburn (R-TN), Amanda Carpenter (Fmr. Staffer – Ted Cruz), Mindy Finn (fmr. RNC)
November 19, 2015	Senator Bernie Sanders (I-VT), 2016 Presidential Candidate
November 3, 2015	Valerie Jarrett – Senior Advisor to President Obama

October 20, 2015	John Kerry, Secretary of State
October 19, 2015	Ernest Moniz, Secretary of Energy
October 16, 2015	Tarja Halonen – former President of Finland
October 1, 2015	Atifete Jahjaga (President of Kosovo) & Madeleine Albright (former Secretary of State)
September 30, 2015	Mitt Romney (R) – Former Governor of Massachusetts, 2012 Presidential Candidate
September 29, 2015	Michael Steele – former chairman Republican National Committee
September 24, 2015	James Clapper, Director of National Intelligence
September 17, 2015	King Felipe VI and Queen Letizia of Spain
September 10, 2015	AFL-CIO President Richard Trumka
September 10, 2015	Chelsea Clinton
September 8, 2015	Dan Pfeiffer (former White House Communications Director and Senior Advisor to President Obama)
July 1, 2015	EPA Administrator Gina McCarthy
June 19, 2015	UNESCO Director General Irina Bokova
May 16, 2015	UN Secretary General Ban Ki-Moon
May 16, 2015	Former Secretary of Labor Elaine Chao
May 14, 2015	Congressman John Lewis (D-GA)
May 12, 2015	Senator Tim Scott (R-SC)
May 12, 2015	Senator Cory Booker (D-NJ)
May 8, 2015	President Barack Obama (D)
April 28, 2015	Senator Richard Durbin (D-IL)
April 23, 2015	Tony Blair, former UK Prime Minister

April 22, 2015	Hillary Rodham Clinton (D) – Former Secretary of State, 2016 Presidential Candidate
April 22, 2015	Ashton Carter, Secretary of Defense
April 21, 2015	Former President Bill Clinton (D)
April 21, 2015	Congressman Hakeem Jeffries (D)
April 16, 2015	Matteo Renzi, Prime Minister of Italy
April 6, 2015	Former USAID Administrator Rajiv Shah
March 19, 2015	World Bank President Jim Yong Kim
March 17, 2015	Rep. Jeff Fortenberry (R-NE), former Sen. Sam Nunn (D-GA), former Sen. Richard Lugar (R-IN) & Des Browne (former UK Defense Minister)
February 27, 2015	Sheikh Tamim Bin Hamad Al-Thani – Emir of Qatar
February 19, 2015	Rula Ghani – First Lady of Afghanistan
February 12, 2015	FBI Director James Comey
February 11, 2015	Congressman Keith Ellison (D-MN)

Law Center:

February 24, 2016	Supreme Court Justice Samuel Alito
November 18, 2015	Supreme Court Justice Antonin Scalia
November 5, 2015	Jeh Johnson – Secretary of Homeland Security
October 30, 2015	Senator Richard Durbin (D-IL)
May 17, 2015	Claudia Paz y Paz Bailey (former Attorney General – Guatemala)
March 24, 2015	Senior White House Advisor Alice Hill

Mr. CROWLEY. Thank you. What we are seeing today, in my opinion, is this Subcommittee is really searching for a problem where no problem exists.

Georgetown University isn't bound by the First Amendment, but they are, on their own initiative, revising their policies to ensure full inclusivity for all of their students. They are doing that for academic diversity, and not because they are being compelled by the government or by this Subcommittee's hearing today. I want to make it clear, Georgetown University is one of the preeminent universities in our country because of this type of policy.

Essentially, they are showing the true spirit of a liberal arts school: Being open to debate and adopting policies that best reflect their students and the needs of that student body. This Subcommittee should be praising Georgetown University for their actions, and not bashing the Nation's preeminent Catholic institution of higher learning.

We are also seeing this Subcommittee walk into this issue at the last minute, providing no value added, in my opinion, when there are a number of other issues we should be examining in our role on oversight. I would suggest our time be better spent on a hearing discussing the impact of the budget cuts on customers and consumers and the services at the IRS. Or a hearing on the ongoing and escalating threat of taxpayer identity theft, where criminals are literally stealing someone's identity to file an income tax return and claim someone else's refund. It is going on right now, while this Committee is discussing this issue. This real impact on lives of Americans is going on while we dither on this issue.

I think Congress should get back to focusing on the needs of the people back home, and not the special interests here in Washington, D.C. And with that, Mr. Chairman, I will yield back the balance of my time.

Chairman ROSKAM. Thank you.

Mr. Smith.

Mr. SMITH OF MISSOURI. Thank you, Mr. Chairman. I appreciate this hearing. I am pretty amazed with the testimony that we have not heard of any comment of the University of Missouri. That is the university that I graduated from. It is from our State.

And one point of concern where I think it really hits home, especially where Mr. Atkins and Mr. Zuckerman kind of hit some points on free speech, is that it was publicized quite a lot of a professor at the university that tried to halt a reporter from taking photos and being assembled in the area where there was some protesting going on back in November. And, unfortunately, a week ago today she was fired. But it took several months before that firing took place, and it was actually a four-to-two vote by the board of curators to even fire her.

And I was just looking through, during this discussion, a *Washington Post* article that showed some statements made during that whole process of basically muzzling freedom of speech. And we are talking about a public institution, not a private one, like Georgetown. The University of Missouri is a public institution. And in the *Washington Post* it was said that this professor approached this reporter, who was just wanting to take photos, and it was there the professor said, "I can't hear you, hey, hey, ho, ho, the reporter has

got to go,” and just kept chanting, and then also asked for “some muscle to come over.” That was their statement which was in the video that—a lot of people said.

And so, when we are talking about freedom of speech, it needs to be freedom of speech. And I think that this is a very important hearing, because no one’s freedom of speech should be muzzled, regardless of what your speech is going to be, especially at a public institution.

So, I applaud the Chairman for holding this hearing—

Mr. CROWLEY. Will the gentleman yield just for a moment?

Mr. SMITH OF MISSOURI. Yes, I will.

Mr. CROWLEY. You said “especially at a public institution.” We understand that at a private college that does not—that doesn’t apply.

Mr. SMITH OF MISSOURI. I am talking about a public college.

Mr. CROWLEY. For the record. Thank you, sir.

Mr. SMITH OF MISSOURI. I understand there are different mechanisms between a private university and a public one, but I am talking about a real problem that has faced a public university. So—and this is quite a big issue.

So, I would also like—I may not say your name right—you know exactly who I am talking to, thank you.

[Laughter.]

Could you give me a—I noticed in your testimony, I believe, that there was mentioned a university that prevented some folks from releasing—you know, handing out the Constitution. Could you go into more detail on that?

Ms. SEVCENKO. I believe you are referring to Modesto Junior College at which an Army veteran, Robert Van Tuinen, wanted to hand out copies of the Constitution to celebrate Constitution Day. He had been doing that for approximately 10 minutes when a security guard came up to him and told him that he needed to stop doing that. If he was going to be engaging in any public expression, he needed to be in the free speech zone. And, in order to get to the free speech zone, you have to sign up for it.

So he then went to the administrator, who took out a book, which is an appointment book like you would see at the dentist’s office, you know, where they sort of rifle through and see when an appointment might be available. He was told that the free speech zone, which holds two people, was booked until the beginning of October.

So if he wanted to come back at the beginning of October, he could stand in the corner and try to hand out his Constitutions. And he said, “But today is Constitution Day,” and that didn’t matter.

Mr. SMITH OF MISSOURI. Quite interesting. In your experiences, have you seen that some types of views are more likely to be censored than others?

Ms. SEVCENKO. As I said in my statement, this is a bipartisan problem. We see all sorts of speech being censored. It can be from the right, it can be from the left. Nicole wanted to talk about gun rights in Texas. The administrators wouldn’t let her. We are engaged in litigation on behalf of the National Organization for the

Reform of Marijuana Laws at Iowa State University. They wanted to put a pot leaf on a tee shirt; they were told——

Mr. SMITH OF MISSOURI. And I think we saw that with the gentleman to your right, as well.

Ms. SEVCENKO. Yes.

Mr. SMITH OF MISSOURI. So it is different spectrums, politically. So I agree.

Thank you, Mr. Chairman.

Chairman ROSKAM. Mr. Davis.

Mr. DAVIS. Thank you very much. Thank you, Mr. Chairman. And I too want to thank the witnesses for coming.

Mr. Chairman, given the focus of the hearing, I wish to raise a serious concern about the possible misuse of 501(c)(3) status by certain for-profit colleges that converted to non-profit status, while still operating to the for-profit benefit of the former owners. And so I ask to submit for the record a report by the Sentry Foundation on this issue that documents questionable activities by some former for-profit colleges that appear to violate the legal requirements of 501(c)(3).

Chairman ROSKAM. Without objection, so ordered.

[The submission of The Honorable Danny Davis follows:]



Dear Applicant,

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501 (c) (3) of the Internal Revenue Code.

ISSUE BRIEF

THE COVERT FOR-PROFIT

How College Owners Escape Oversight
through a Regulatory Blind Spot

Robert Shireman | October 6, 2015



ISSUE BRIEF

THE COVERT FOR-PROFIT

How College Owners Escape Oversight
through a Regulatory Blind Spot

Robert Shireman | October 6, 2015

Over the past decade, abuses by colleges operating in the for-profit education sector have been well documented.¹ Buoyed by a tide of government-enabled financing, these for-profit colleges expanded their enrollment from 1990 to 2013 more than ten times faster than did nonprofit or public schools,² and they widely engaged in aggressive and misleading recruitment and other predatory practices³—all to fill programs that had abysmally low completion and job placement rates. Many students that had enrolled in for-profit colleges were left with huge student loan debts and little else to show for their education investment. Meanwhile, taxpayers shelled out billions of dollars in financing and tax breaks for these schools, with little accountability to ensure that their students were getting an education that would lead to gainful employment.

Today, many of these for-profit institutions find themselves on the defensive and are now being scrutinized more closely, both by the government

agencies that finance them and by consumers who may seek, instead, to enroll at public and other nonprofit institutions. High-profit, high-enrollment schools such as ITT Tech, DeVry, and the University of Phoenix are allowed to continue to participate in the federal loan program, but under even stricter rules.⁴

Recently, a new trend in the abuse of college students and federal education dollars may be under way: the creation of the covert for-profit. The owners of some for-profit institutions have sought to switch their schools to nonprofit status, freeing them from the regulatory burdens of for-profit colleges, while continuing to reap the personal financial benefits of for-profit ownership.

Prompted by news of several recent conversions of for-profit colleges into nonprofits, The Century Foundation has obtained IRS and U.S. Department of Education records and communications that call into question the legitimacy of some of these conversions. Through four case studies, based on hundreds of pages

This brief can be found online at: <http://appstcf.org/covert-for-profit>

of documents obtained from government agencies, the examination reveals a dangerous regulatory blind spot, with the two federal agencies each assuming, wrongly, that the other is monitoring the integrity of the “nonprofit” claims of these colleges.

This report begins by describing the role of nonprofit governance in promoting good stewardship in education and the problems that have resulted from unrestrained profit-seeking in American higher education. The case studies then lay out four instances of possible covert for-profits, where owners have managed to affix a nonprofit label to their colleges while engineering substantial ongoing personal financial benefits for themselves. The report concludes with specific steps government regulators should take to prevent illegitimate claims to nonprofit status and to protect students and the public interest.

THE PUBLIC TRUST PURPOSE OF NONPROFITS

An enterprise organizes itself as “nonprofit” to provide some assurance to customers and donors that while the organization needs money to pursue its mission, the ultimate goal is not financial. Two core requirements are designed to offer that assurance. First, anyone who is paid is, ultimately, answerable to someone who is not. Those unpaid overseers are often called “trustees” because they are entrusted with the responsibility of ensuring that the organization is pursuing a charitable or educational goal rather than simply financial gain. They are unpaid (except in special circumstances) so that their judgment of what is best for students or society is not skewed by a personal financial interest. Second, any money that is earned by the organization beyond what is needed to pay expenses (the amounts that would be profit in a for-profit entity) is reinvested in the organization. In other words, no one owns stock or shares that can be sold or earn dividends. The trustees control the organization in the same way that owners would, but they cannot take the money for themselves.⁵

Nonprofits are common in ventures that involve goals that are difficult to measure or populations that are vulnerable, such as public health, caring for the poor, the arts, religious or spiritual fulfillment—and education. In return for serving society’s interests above private interests, nonprofit organizations are favored in providing certain types of services and are granted tax exemptions that can be substantial.

The unpaid trustees are seen as such a bulwark against abuse that the organizations are, in some cases, allowed to engage in practices that would be illegal in a for-profit context. Many nonprofits, for example, involve vast numbers of people who work for free as volunteers, a practice that is highly restricted in the for-profit environment. Imagine a supermarket or snack food chain enlisting two million underage girls to sell cookies: the operation would be shut down and the companies would be prosecuted. Yet the nonprofit Girl Scouts do exactly that every year, selling 175 million overpriced cookies baked by for-profit contractor bakeries. This “child labor” is not illegal because the Girl Scouts councils are nonprofit: their unpaid boards are trusted to engage in this cookie selling, which they believe benefits the girls and is consistent with the values of the organization. Compared to the supermarket owner or cookie baker, the Girl Scout councils are far more likely to make decisions that truly benefit the girls—*because council members do not have a personal financial interest*. They are not allowed to keep the money for themselves.

The nonprofit organization that runs Wikipedia offers a different type of example of how being a nonprofit affects the decisions that are made. While Facebook, Google, and other investor-owned Internet companies have all decided to take and sell our personal data for profit, Wikipedia has, remarkably, respected users’ anonymity. Wall Street types, salivating over Wikipedia’s billions of page views and massive troves of salable user data, think the people who run the organization

are completely nuts. One analyst detailed all of the ways that Wikipedia could earn money, from selling advertisements to t-shirts, and calculated the website's lost revenue at \$2.8 billion a year—forty-six times the organization's current income.⁶

Who would leave that kind of money on the table? People who are not allowed to take it. If Wikipedia had owners instead of trustees, the temptation to grab nearly \$3 billion would be impossible to resist, even though it would destroy Wikipedia as we know it. Instead, Wikipedia has kept consumers' interests at the forefront because it is a nonprofit organization. It is a different beast as a result of being structured without owner-investors.

Putting non-owners in control serves as an internal regulatory mechanism, muting the temptation to "cut corners on quality or otherwise take advantage of user vulnerability," economists say. As a result, nonprofits "are more immune against moral hazards than for-profit firms would be under similar circumstances."⁷

FOR-PROFIT OWNERSHIP'S BAD HISTORY IN HIGHER EDUCATION

In many contexts, a for-profit business structure operates beautifully, almost miraculously, leading to positive outcomes for provider and consumer alike. In education, however, because of the nature of the goal and "customer" (both students and society), the results of for-profit provision have frequently proved one-sided. The ability of investors to pocket whatever (often taxpayer-supplied) funds that are not already spent, or to buy and sell shares in the business organization, can prompt noticeably different choices on a range of institutional decision points, such as:

- Which students to recruit and enroll; whether to enroll students who are on the borderline of academic qualifications.

- Whether and how fast to grow enrollment, given the need to maintain quality.
- How much to charge which students (pricing and aid/discounts).
- Who to hire as instructors and staff.
- How much to rely on full-time versus adjunct faculty.
- How much to defer to faculty expertise.
- The type of information and advice to provide to potential students.
- Which programs (majors) to create, expand, or contract.
- How standardized the curriculum should be.
- How and where to advertise; what information to put on the website.
- How much to spend on recruitment of applicants.
- What level of student performance is adequate to pass a class or to receive a degree.

At every turn in the educational enterprise, the owner's profit motive can distort the educational mission, making owner-operated schools more aggressive and singly-focused on maximizing return, even to the point of self-deception. And in fact, the presence of profit in higher education over the years has led to a series of scandals—and resulting attempts at reform.

When the G.I. Bill (the Servicemen's Readjustment Act of 1944) was enacted for soldiers returning from

World War II, the funds they received could be used at any type of school. By 1949, more than five thousand new for-profit schools had sprung up. Investigations revealed that many of the schools were “inflating tuitions, extending the length of courses, enrolling too many students,” and keeping students on the attendance rolls long after they had stopped attending.⁸ To address the problems, Congress adopted a paying-customer requirement: schools would need to show that someone other than veterans was enrolled so that the schools could not simply price their programs to milk whatever maximum amount taxpayers offered up. It was a market test, called the 85–15 rule because no more than 85 percent of the students in a program could be veterans financed by the government.⁹

Sobered by the G.I. Bill experience, Congress, when creating the first national student loan program in 1959, restricted funding to public and nonprofit institutions.¹⁰ When for-profits were later invited in, it was through what was considered a narrow and limited exception: loans would be available only for job-specific training, leading to “gainful employment in a recognized occupation.”¹¹ Experts had assured Congress that occupational programs were a safe role for schools with owners because the programs would lead to graduates earning “sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.”¹² Unlike a broader liberal arts education, which is difficult to measure, it would be easy to tell if a for-profit school is not offering valid training for a job.

The narrow vocational exception worked well for a while. But colleges were allowed to self-certify that a particular program was occupational in nature. While a program labeled as Liberal Arts or Philosophy might be rejected by the U.S. Department of Education, in most cases the companies’ assertions were not challenged. As a result, over time, the colleges broadened and

extended their offerings while continuing to check the box—declaring that each program “leads to gainful employment in a recognized occupation”—to gain them access to federal grants and loans. The career schools slowly but decidedly started thinking of themselves as no different from public and nonprofit colleges—even though the financial incentives and control structures were different in critically important ways.

In the 1980s, an explosion of student loan defaults led to what President Reagan’s secretary of education William J. Bennett called “shameful and tragic” actions by for-profit institutions, evidence of “serious, and in some cases pervasive, structural problems in the governance, operation, and delivery of postsecondary vocational-technical education.” Releasing a report to Congress about the problem, Bennett said, “The pattern of abuses revealed in these documents is an outrage perpetrated not only on the American taxpayer but, most tragically, upon some of the most disadvantaged, and most vulnerable members of society.” The head of the trade association representing for-profit pledged to work with the secretary and the Congress to “close down any institution that is not operating in an ethical way.”¹³

The 1980s abuses led Congress to enact a long list of reforms in 1992. Most of the reforms applied to all colleges, whether they had investor-owners or not. One provision that applied to for-profit institutions was a Department of Education version of the G.I. Bill’s paying-customer requirement. Originally 85–15, and later changed to 90–10, it requires schools to show that they are not wholly reliant on money from the Department of Education.

In recent years, problems in federally funded for-profit education have reemerged with the advent of online education, weakened regulations, and lax enforcement. Starting in 2009, the Department of Education took

a number of steps to firm up regulations designed to prevent fraud and abuse in the federal financial aid programs. Most of the regulations, such as the ban on bounty-paid recruiters, apply to all types of colleges and programs.

The regulatory proposal that was fought most vigorously by the for-profit lobby was a clarification of what it means to be an occupational program that “prepares students for gainful employment in a recognized occupation.” Offering career-preparation programs is the primary route by which for-profit institutions gain access to federal funds, and the new “gainful employment” rules will end federal funding of programs that consistently fail to bring graduates adequate earnings given the student loan debt they are taking on.¹⁴

With the public and regulators increasingly cautious about for-profit education, what are college owners to do?

FOR-PROFIT COLLEGES HIDING IN A REGULATORY BLIND SPOT

To escape the gainful employment and 90-10 rules, and to reassure consumers who have become wary of for-profit schools, some large education companies are beginning to explore whether they simply can reclassify themselves as nonprofits.¹⁵ A valid and complete conversion—led by trustees with no financial interest and operating in good faith—would provide the oversight that makes nonprofits a better value and less inclined toward predatory practices.

Unfortunately, the conversion to nonprofit status is susceptible to abuse by covert for-profits—schools that obtain the nonprofit label yet continue operating like for-profit institutions—leaving consumers and taxpayers more vulnerable than ever.

Covert for-profit colleges can exist because while the Department of Education relies on the Internal Revenue Service’s judgment of which institutions are and which are not valid nonprofits,¹⁶ the IRS rests its determination on the declarations and self-regulation by the trustees of these nonprofits, based mostly on an honor system. As with other taxpayers, the IRS relies on the honesty of the individuals and corporations that file tax returns, an honesty that is tested only in case of an audit, which often takes place years afterward.

The path to nonprofit status starts, of course, with paperwork. Organizations that seek to be designated by the IRS as a tax-exempt nonprofit must complete a Form 1023, which asks a long list of questions about the entity’s goals, structure, management, and finances. Sometimes, an examiner in the IRS Exempt Organizations Division will seek clarifications before designation as a tax-exempt entity is awarded, but the conclusion of the process relies on the assumption that the information provided by the respondent accurately reflects how the organization will wind up operating.

The IRS is quite aware that organizations evolve, sometimes in ways that are contrary to the rules that are supposed to apply to nonprofit entities. Since it would be impossible for the IRS to review and approve the nearly constant changes at the nation’s more than 1,630,000 recognized tax-exempt organizations, the IRS relies on a system of self-regulation, backed up by the threat of potentially retroactive revocation of tax exempt status. For example, when awarded nonprofit status, organizations are told by the IRS that if they change their structures and operations, they do so at their own peril:

A ruling or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with the exemption in the character, the purpose, or the method of operation of the organization.¹⁷

The “IRS determination letter” is not only revocable, it can be revoked retroactively

if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction . . . for the purpose of diverting corpus or income from its exempt purpose.¹⁸

The revocation can go back as far as the entity’s original approval as a nonprofit so that an entity that we all thought was a charity can be declared to have never been one. This look-back reparation was tested and affirmed in a seminal case decided in 2013: an organization aimed at helping people make down payments on purchasing homes was found to not be functioning as a valid nonprofit, and the IRS in 2010 revoked its tax-exempt status effective back to the organization’s creation in 2000, ten years earlier.¹⁹

Put simply, if an organization acts like a for-profit entity, restructuring or operating in a way that is benefiting a particular person or family, the nonprofit designation can be revoked retroactively by the IRS.

The IRS, however, reexamines less than 1 percent of existing nonprofits each year,²⁰ which means that an entity without the requisite internal checks and balances in place to ensure nonprofit governance can operate in violation of IRS rules for years, or even decades, without getting caught.

Meanwhile, the Department of Education currently relies solely on the IRS label in determining nonprofit status. Beyond the IRS designation, there is no routine effort to ensure that a school is actually following the core expectations of nonprofits.²¹ Maneuvering to affix a nonprofit label allows a school to essentially hide in plain sight, avoiding the regulations and scrutiny applicable to for-profit colleges as well as the financial accountability required of nonprofits.

POSSIBLE COVERT FOR-PROFITS: FOUR CASE STUDIES

Government records of four newly designated nonprofit schools that had all previously been operating as for-profit entities reveals some troubling behavior. While IRS Form 1023 filled out by the four college chains undergird the claims that they are making to nonprofit status, the annual tax returns (Form 990) filed by the colleges, and other evidence about the schools’ actual activities and intentions, indicate that three of the four are operating in ways that are not at all consistent with what the organizations asserted when they were seeking the initial IRS approval; the fourth college’s application appears to have gone through the IRS review without detection or discussion of its internal conflicts of interest.

Each year, more than half a billion tax exempt dollars have been flowing to just the four institutions examined for this report: Herzing University; Remington Colleges, Inc.; Everglades College; and the Center for Excellence in Higher Education (CEHE). The findings of this report, however, indicate that their regulatory treatment as nonprofit schools may not be justified.

Herzing University

When Herzing University was profiled in a U.S. Senate report in 2012, it was a privately held, for-profit company headquartered in Milwaukee, Wisconsin, with eleven campuses in eight states. While still relatively small, it had grown by 260 percent since 2001, to more than 8,000 students. Founded in 1965 by Henry and Suzanne Herzing, the company was originally a computer-training institute. Over time, it had morphed into a “university” offering Associate and Bachelor’s degree programs in business management, electronics, health care, graphic design, and public safety, as well as some Master’s degrees (online only).²²

In the 2008–09 school year, Herzing’s federal financial aid revenue grew to \$73,633,448, a 42 percent increase

over the prior year. At the same time, however, the proportion of revenue coming from paying customers or other sources of financial aid was dropping: 18 percent overall in 2008, 15 percent in 2009, 14 percent in 2010.²³ As a result, the school was approaching the 10 percent minimum that is required under the Department of Education's 90-10 rule. While the company is not allowed to count its own scholarships given to students as part of the 10 percent, support from independent scholarship programs would count.

On December 29, 2009, Henry Herzing submitted a Form 1023 to the IRS, seeking a tax-exempt designation for a new corporation called the Herzing Educational Foundation Ltd., which would provide college scholarships to poor students. The application was assigned to specialist Terry Izumi in the Cincinnati, Ohio, office of the IRS. Izumi was skeptical. Normally, giving scholarships to the poor would be a slam-dunk for an organization seeking nonprofit status. But the application was unusual because the scholarships would pay tuition at only one particular school, bearing Henry Herzing's name. Izumi investigated and discovered that the eponymous college was a business owned by Herzing.

In a letter to Henry Herzing, Izumi explained that, to be considered nonprofit, an organization must demonstrate that "it is not organized or operated for the benefit of private interests," such as particular individuals, their family members, shareholders, or people controlled—directly or indirectly—by business owners or their family members. Why, Izumi asked, is the board of the Herzing Educational Foundation composed of people who own or operate the for-profit college, rather than by independent members of the community? If the board continues to include people with a financial interest in Herzing University, what system of checks and balances will be used to assure that the assets of the nonprofit are used exclusively for charitable purposes? How does the public know

that you are not using the scholarship program as a recruiting tool of the for-profit entity?

After talking with Izumi by phone more than once, Herzing's lawyer sent to the IRS an eight-page letter, asserting that: (1) the foundation's day-to-day operations "will be minimal," with volunteers doing the bulk of the work in administering, perhaps, \$60,000 in scholarships; (2) "there is no intent to use the assets of the organization for any other purpose" besides scholarships; and (3) "it is not anticipated that Henry Herzing will have a significant formal voice" in the nonprofit's activities. Two weeks later the IRS granted the scholarship foundation's request for status as a public charity. Then, last year, the foundation's leadership decided to use the nonprofit entity in a very different way (see Table 1).

The nonprofit purchased Herzig University for \$86 million from the Herzing family, effective January 1, 2015, and continues some leases of property from Herzing family members. According to a press report, a state official said that Herzing likely made the change to avoid new federal regulations and to gain access to state grant funding.²⁴ In response to a request for comment, attorneys for Herzing University (the nonprofit) assert that the purchase price, to be paid over thirty years, and the leases are approved by independent board members at fair market values and that "rigorous conflict-of-interest rules are followed in all such instances."

After questions were raised about the transaction by this author and by members of Congress, the university on July 6, 2015, asked the IRS to update its classification to reflect that it had become an educational institution. The IRS did so on August 19, noting that it had not undertaken a fresh review of the entity's nonprofit status. As of September 9, 2015, the Department of Education considers Herzing's request to be considered a nonprofit an open case "undergoing substantive review."²⁵

TABLE 1
HERZING EDUCATION FOUNDATION

What HEF told the IRS in the process of seeking its tax-exempt status	What HEF did after getting its designation letter from the IRS
The entity is not a school and will not operate a school as either a primary or secondary activity.	The entity became Herzing University, purchasing the school from Henry Herzing.
The entity will be small, around \$60,000 in scholarships, and run by volunteers.	The entity has total annual revenue of more than \$100 million, mostly from the federal government.
Henry Herzing will not have a significant role in the entity.	Henry Herzing remains as a board member and honorary chancellor, with his daughter serving as the president and CEO.

Source: Information taken from Herzing University website as well as from documents obtained from the IRS and the Department of Education

SOURCE DOCUMENTS FOR HERZING UNIVERSITY

- December 2009 Form 1023 and related materials [Application for Recognition of Exemption under Section 501 (c)(3)]
- IRS Request for Additional Information (August 2010)
- Herzing Response (August 2010)
- IRS Determination Letter (September 2010)
- 2011 Form 990
- 2012 Form 990

Documents are available at td.org.

Remington Colleges Inc.
(And Educate America)

Between the time that the Herzing Educational Foundation submitted its application for tax-exempt status and the actual designation by the IRS, more than eight months had passed, about the average time that it takes for IRS review of a Form 1023. Remington Colleges, Inc., with nineteen campuses in ten states

and an online operation, got its IRS designation in eight weeks flat.

At the same time that it sought nonprofit status, Remington Colleges purchased a chain of schools, Educate America, owned primarily by Jerald Barnett, Jr., for \$217,500,000. The college was quite open about the fact that it was attempting to evade the 90-10 rule, which requires colleges to show that at least 10 percent of their revenue is from courses other than the U.S. Department of Education. *The Chronicle of Higher Education* quoted school officials as saying that the reason for becoming nonprofit was to escape the 90-10,¹⁶ a U.S. Senate committee's review of financial data concluded that the school's difficulties in meeting the 90 percent threshold "likely served as the prime impetus for conversion to nonprofit status,"²⁷ and the school's application for tax-exempt status actually

includes escaping regulations as a reason for becoming nonprofit.²⁸

For a nonprofit, however, the structure of Remington Colleges, Inc., is extremely unusual. As described earlier, the board of trustees for a nonprofit is normally comprised of people who care about the organization's mission but do not gain any financial benefit from it. Carleton College in Minnesota, for example, is controlled by forty-two trustees (see Figure 1). Only one of them, the president of the university (who is hired by the rest of the board), earns anything at all. Everyone else donates time and, likely, money to the college, without the expectation of a financial return on their investment.

Remington Colleges, in contrast, has a five-member board of trustees. One of them is the CEO of the colleges. Another is the primary creditor, Jerald Barnett, whose company is collecting payments from Remington's purchase of his Education America campuses and who is the landlord for the properties used by the schools. The three other board members, considered independent in the Remington application for tax-exempt status, are the principal and two employees of a financial services firm, Stephens, Inc., which assisted with the purchase of the Educate America campuses for a fee of \$2.5 million. Furthermore, Stephens, Inc., will continue to be paid by Remington to manage the retirement plan for employees (amounts not disclosed). Not only that, but Remington has given Stephens, Inc., an explicit waiver regarding conflicts of interest—meaning that the firm can choose investments that benefit Stephens, Inc., even if the investment choices are bad for Remington Colleges.²⁹ And the Remington board of trustees is actually not even in control. Instead, Warren Stephens, the owner of Stephens, Inc., has the power to replace Remington board members without cause.³⁰

As Figure 2 shows, Remington's control structure is extremely convoluted, and may lack protections against self-dealing.

How did the IRS miss all of this in the exemption application? The IRS may have rushed because of the requester's insistence on an expedited review, accompanied with an explanation that created the impression that the U.S. Department of Education needed an answer within a particular time frame, which the lawyers for Remington described as about seven weeks from the date of their application. Among the exhibits submitted by Remington in the 2010 Form 1023 application was the following "Expedite Request":

Re: Remington Colleges, Inc.

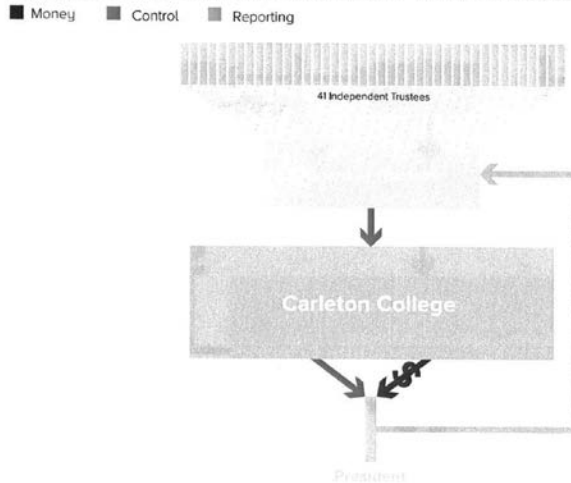
EIN: 27-3339369

FORM 1023, EXPEDITE REQUEST

Ladies and Gentlemen:

The transaction is scheduled to close on December 1, 2010. The transaction cannot close unless the College receives a favorable IRS Determination Letter indicating that the College is a qualified §501(c)(3) tax-exempt organization. The necessity of obtaining an expedited determination is magnified by the fact that the College is required to make a change of control filing with the United States Department of Education to obtain approval of the transaction not less than 45 days prior to the closing date in order for the students enrolled in the Schools to continue to be eligible to receive loans and grants under the Title IV federal financial aid programs. The College must submit with the change in control application the IRS Determination Letter on the College indicating that the College is a §501(c)(3) tax-exempt organization. To close by December 1, 2010, would require that the change of control filing be made not later than October 15, 2010.³¹

FIGURE 1
CARLETON COLLEGE'S NONPROFIT GOVERNANCE STRUCTURE



The application materials provided by the IRS appear to indicate that the Remington application was approved without any questions from the IRS specialist to the applicant, in stark contrast to time and attention that the IRS put into its review of the Herzing application.

Remington officials did not respond to a request for comment from The Century Foundation.

SOURCE DOCUMENTS FOR REMINGTON COLLEGES

- August 2010 Form 1023 and related materials [Application for Recognition of Exemption under Section 501 (c)(3)]
- IRS Determination Letter (October 2010)
- 2012 Form 990

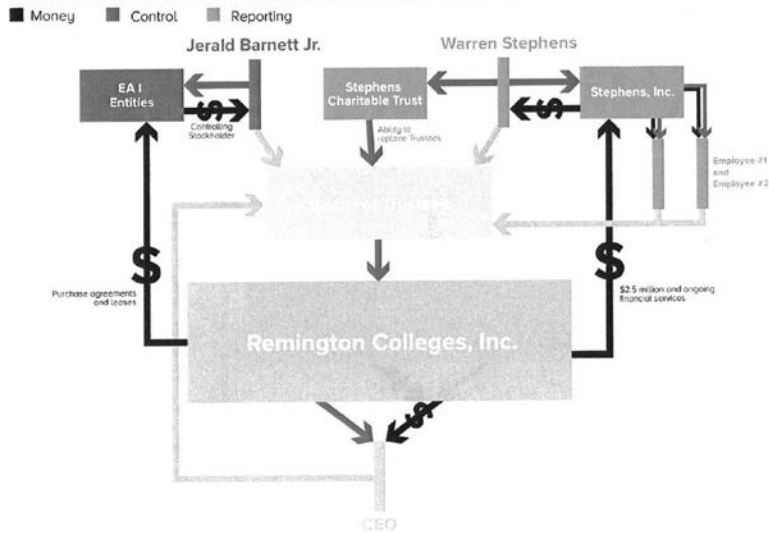
Documents are available at tcf.org.

Everglades College (DBA Everglades University and Keiser University)

The Form 1023 that Arthur Keiser submitted to the IRS in September 2000 seeking nonprofit status for Everglades College raised suspicions, leading to a twenty-one-month, 388-page tug-of-war between the Everglades lawyers and the IRS. The exchange between Keiser and the IRS is curious in its complexity—the IRS obviously saw many red flags in the application, yet eventually granted the college tax-exempt status. The record of the IRS requests and how Everglades responded to them provides a telling illustration of the principles at stake concerning nonprofit governance.

On March 7, 2000, Arthur Keiser petitioned the Florida Division of Corporations to change the name of a for-profit company he had purchased, American

FIGURE2
REMINGTON COLLEGES, INC. GOVERNANCE STRUCTURE



Flyers College, Inc., to Everglades College, Inc., and to convert the entity to a nonprofit corporation under Florida law. On September 6, 2000, Keiser filed a Form 1023 with the IRS seeking federal tax-exempt status for the converted company. The application was assigned to charitable organization specialist Aletha Bolt and then transferred to specialist John Jennewein in Cincinnati.

The IRS had a lot of questions. The first set, sent in a January 2001 letter, included inquiries about a lease agreement between the proposed nonprofit and a company owned by the Keisers, Keiser School, Inc.; details of the purchase of the for-profit predecessor corporation; the assets and liabilities of Everglades and of the Keisers; and an appraisal of the value of the college. Everglades responded.

The IRS asked for more information about compensation of board members, the salaries and qualifications of faculty, and related topics. Everglades responded.

The IRS requested more information including the Keiser purchase agreement, the management agreement between Everglades Management (previously disclosed as owned in part by Keiser) and the college, any loan agreements, and an explanation of the connections to Keiser College, Keiser Career Institute, and Keiser Management Inc., Susan Ziegelhofer, the president of Everglades College, Inc., responded that there was no purchase agreement: the transfer of the college "was a charitable contribution of the entire educational facility." She further declares that there are no loans between the for-profit and tax-exempt entities.

TABLE 2
EVERGLADES COLLEGE

What Everglades told the IRS in the process of seeking its tax-exempt status	What Everglades did after getting its designation letter from the IRS
"[N]either Dr. Keiser nor any members of his family or any entities owned or controlled by them have derived, or will derive, any non-incidental private benefit attributable to Everglades College."	Everglades College, Inc., reports that in 2011 it paid a total of \$34,481,789 to entities owned by Keiser family members.
"Dr. Keiser's preference would be for Everglades College to be housed in a different facility; however, its cash flow and working capital needs will not allow for such a move at this time."	Everglades College, Inc., in 2011 rented campus facilities from fourteen corporations at least partly owned by Arthur Keiser.
Instead of Arthur and Belinda Keiser being two of the three directors of the corporation, two additional directors "unrelated" to the Keisers were added.	Both of the added directors had business relationships with Arthur Keiser. The third independent director became the Everglades general counsel, as well as the registered agent for some of the Keiser businesses.
On the separate and independent board of trustees, no more than two members may be employees of Everglades College or have "any other business relationship with Everglades College."	Everglades College, Inc., reports that in 2011, three of its board members owned businesses involved in transactions with Everglades College.

Source: Calculation based on information in IRS Form 990 submitted by Everglades as well as business registration documents from Florida Secretary of State.

In response, the IRS requested that Everglades provide the following information regarding loans or payments to Keiser-controlled entities:

For each of the following please explain and specify the accounts:

- a. Accounts Payable and Accrued Expenses please provide a detail [sic] explanation why there is a \$50,951.18 debit balance in this account?
- b. If you have no loan or note agreements who is the loan with and what is the relationship for the Loan Payable of \$16,208.41 and please explain the terms and conditions of the loan?
- c. Who is the Loans and Notes Receivable with and what is the relationship and please explain the terms and conditions of the loan?
- d. Who is the Loan Receivable in the amount of \$1,655 with and what is the basis for the loan and please explain the terms and conditions of the Loan Receivable?
- e. Why do you show an amount due to Keiser College for the amount of \$463. [sic]
- f. If you have no management contracts or fees charged by Everglades Management, Inc explain why do you show an amount of \$8,232 due to them? If it is for services please explain the services and what the basis for the charge?

On July 10, 2001, Arthur Keiser, writing as chancellor of Everglades College, explained the various loans and amounts.

On July 16, 2001, a letter from the director of the Exempt Organization Division of the IRS declared

the case closed because "we have not received the information necessary to make a determination of your tax-exempt status."

Months went by, with no documents in the IRS file indicating what, if anything, happened. Then, on December 18, 2001, Jennewein sent to Everglades a detailed seven-page description of the problems with the request for tax-exempt status for Everglades. He cited as reasons for concern the fact that the Memorandum of Understanding for flight training "is serving the private benefit of a for-profit entity" and that "Everglades gave scholarships . . . to students at Keiser College, a for-profit college owned by Arthur, Evelyn, and Robert Keiser." Therefore, as Jennewein described in his letter, Everglades is serving the private benefit of a for-profit entity," as well as renting of Keiser-owned buildings:

Correspondence dated March 30, 2001 signed by Arthur Keiser, President of Everglades College, stated that the building in which the school is located is owned by a partnership in which related parties have a 42% interest and unrelated parties owned a 58% interest. The related parties are Keiser Building Corp., which is owned by Arthur Keiser who owns a 2% interest in the partnership; Spectrum Investment Associates which owns a 40% interest in the partnership is owned 48% by Arthur Keiser, 48% by Belinda Keiser and 4% by Robert Keiser. These joint venture (owned 42% by related parties) leases space to Keiser College which in turn's subleases to Everglades College, Inc. The entire building comprises 83,824 square feet, including the are [sic] occupied by Everglades College. Also, housed in this facility are Keiser Career Institute and Everglades Management Company. Again, this arrangement services the private benefit of the Keisers and they're related for profit entities.

He cited the laws, regulations, and court cases governing tax-exempt entities, including a case that says:

When a for-profit organization benefits substantially from the manner in which the activities of a related organization are carried on, the latter organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3), even if it furthers other exempt purposes.³²

He cited a school-specific ruling from the IRS that hinges in part on the board of the nonprofit being "completely different" from the for-profit entity's owners:

Rev. Rul. 76-441, 1976-2 C.B. 147, presents two situations concerning school operations. In the first scenario a nonprofit school succeeded to the assets of a for-profit school. While the former owners were employed in the new school, the board of directors was completely different. The ruling concludes that the transfer did not serve a private interest. Part of that conclusion was based on the independence of the board. In the second scenario, the for-profit school converted to a nonprofit school. The former owners became the new school's directors. The former owners/new directors benefited financially from the conversion. The ruling concludes that private interest was served. The conclusion is stated as follows: "The directors were, in fact, dealing with themselves and will benefit financially from the transactions. Therefore, (the applicant) is not operated exclusively for educational and charitable purpose and does not qualify for exemption from federal income tax under Section 501 (c) (3) of the Code."

He explained why Everglades does not qualify as tax-exempt, and suggested that the application be withdrawn:

Everglades College is privately held and controlled by the Keisers despite the fact that they do not constitute a majority of the governing board. Therefore, it appears you operate for the benefit of private interests of the Keisers. You are similar to the organization in Old Dominion Box Co. . . . because you operate for the benefit of private parties. Operating for the benefit of the Keisers is a substantial nonexempt purpose that will preclude exemption.

Although Everglades College is offering educational courses to further one career, the central question is whether you operate for the benefit of private interest of designated individuals, or the creator or the creator's family. In Rev. Rul. 76-441 a for-profit school was converted to a nonprofit school in which former owners/new directors benefited financially from the conversion. The ruling concludes that private interest was served. Although the operation of a school is a charitable activity, the manner in which you operate leads to conclude that your school bestows significant private benefit for the Keisers and their for-profit corporation.

Based on the facts and circumstances provided to date, it appears you cannot satisfy the basic requirements for exemption, in that you fail the operational test. To determine if you qualify under Section 1.501(c)(3)-1(c)(1) of the regulations the Service determines if the organization engages primarily in activities which accomplish one or more exempt purposes. Section 1.501(c)(3)-1(d)(1)(ii) of the regulations expands on the operated exclusively concept by providing that an organization is not operated exclusively

to further exempt purposes unless it serves a public rather than a private interest. Based on the facts that you have provided in your application for recognition of exemption, it appears you are operated for a private purpose rather than a public purpose.

On January 2, 2002, the Everglades attorneys sent a letter, signed also by Arthur Keiser, detailing their responses to the December IRS letter, declaring that the Keiser scholarship recipients "were selected by an independent Board of Trustees"; that the rent paid to the Keisers is at fair market value and that "Dr. Keiser's preference would be for Everglades College to be housed in a different facility; however, its cash flow and working capital needs will not allow for such a move at this time"; and that the college will actually be run not by the board of directors of the corporation, but by the board of trustees (which includes Chancellor Keiser), which is an "independent governing board."

The thirteen-page Everglades response asserted multiple times that "Everglades College is governed by an independent Board of Trustees. Dr. Keiser has no control over the Board of Trustees or its decisions." Responding to the IRS's concern that Everglades College appears to operate for the benefit of the Keisers, the letter said that the opposite was the case: "now that Keiser College is planning to become a four-year program. . . . Everglades College will actually become a 'competitor' to Keiser College." The letter said at least twice that any benefit to the Keisers from Everglades was incidental at most, and concluded by saying: "Again, let me reiterate that neither Dr. Keiser nor any members of his family or any entities owned or controlled by them have derived, or will derive, any non-incidental private benefit attributable to Everglades College."

The IRS followed up with a request for more information, such as purchase agreements and details on shared

space with Keiser College, asking specifically about the independence of the board of trustees. Everglades responded. The IRS then sent a letter recommending that the board of directors be expanded by two people "selected from the community in which you serve." Everglades responded by adding two new directors, Dale Chynoweth and Zev Helfer, "who were selected from the community [and] are unrelated to the members of the current Board of Directors" (Arthur and Belinda Keiser, and James Waldman, an attorney who was then vice mayor of Coconut Creek).

Eventually, on July 7, 2002, the IRS relented and granted Everglades College tax-exempt status, saying to Keiser, "assuming your operations will be as stated in your application for recognition of exemption." As Table 2 shows, this conditions appears not to have been met.

The spirit of nonprofit governance by an independent board of trustees appears to be severely strained in the case of Everglades College. According to records available from the Florida Division of Corporations, at the time that Dale Chynoweth was added to the board of directors, he was hardly "unrelated" to other board members, as he was partner with Arthur Keiser in at least one business (Spectrum Business Park Association). In the ensuing years, the two were business partners in multiple properties that are rented by Everglades College. Zev Helfer joined Arthur Keiser as a business partner (College Pathology Labs, Inc.) just months before being named as an added "unrelated" director of Everglades College, Inc. James Waldman became a state representative, is the general counsel of Everglades College, Inc., and is the registered agent for various related Keiser businesses.

In addition to a board of directors, the corporate bylaws submitted to the IRS for Everglades College, Inc., call for a separate board of trustees to run the college. The bylaws declared that "The independence of the Board

of Trustees is crucial to ensure that Everglades College meets the needs of the communities in which it serves," and Everglades told the IRS that no more than two trustees would either be employees or have "any other business relationship with Everglades College." The 2011 Form 990 submitted to the IRS for Everglades College indicates that three of the trustees owned businesses involved in transactions with Everglades College.

The Form 990 for 2011 also revealed that Everglades College had purchased the schools owned by the Keiser family, valued at \$521,379,055, with \$300,000,000 paid through a loan from the Keisers themselves and the remainder considered a tax-deductible donation by the Keisers. In total, the 2011 Form 990 reveals that Everglades College, Inc., paid \$34,481,789 to entities owned by Keiser family members, including:

- * \$10,875,079 pursuant to the purchase agreement for the Keiser schools;
- * \$21,205,015 in rent and hotel stays at properties owned at least in part by the Keisers;
- * \$1,449,086 for chartered plane travel through companies at least partly owned by the Keisers; and
- * \$130,305 for services from a computer company owned by Keiser family members.

To provide some perspective on the enormity of the \$34 million total, consider that the highest-paid nonprofit president as reported by the *Chronicle of Higher Education* for 2012 earned \$7 million,³³ and the \$34 million would cover the combined salaries of all of the top forty highest-paid public university presidents in 2013.³⁴

Arthur Keiser told a reporter that selling his Keiser schools to Everglades was about "ensuring his family

would have a continuing role in running the university."³⁵

Offered the opportunity to comment on a summary of these findings, a representative of Keiser University provided a brief statement describing the school's history and asserting that "The structure of the corporation and acquiring of assets followed ALL state and federal guidelines and regulations."

SOURCE DOCUMENTS FOR EVERGLADES COLLEGE

- IRS Denial of Tax Exemption (undated, est. 2000)
- September 2000 Form 1023 and related materials [Application for Recognition of Exemption under Section 501 (c)(3)]
- IRS Request for Additional Information I (December 1, 2000)
- Everglades Response I (March 30, 2001)
- IRS Request for Additional Information II (May 3, 2001)
- Everglades Response II (May 21, 2001)
- IRS Request for Additional Information III (June 7, 2001)
- Everglades Response III (June 19, 2001)
- IRS Request for Additional Information IV (June 26, 2001)
- Everglades Response IV (July 10, 2001)
- IRS Letter Closing Case for Lack of Necessary Information (July 16, 2001)
- IRS Explanation of Problems with Everglades Application (December 18, 2001)
- Everglades Responds, Requesting Reconsideration (January 2, 2002)
- IRS Request for Additional Information V (February 16, 2002)
- Everglades Response V (March 8, 2002)
- IRS Response (April 9, 2002)
- Everglades Response VI (April 29, 2002)
- IRS Determination Letter (June 7, 2002)
- College Pathology Labs, Inc., Articles of Incorporation (2001) [acquired through Florida Secretary of State]
- Spectrum Business Park Association, Inc., Corporate UBR Filing (2001) [acquired through Florida Secretary of State]
- 2011 Form 990
- 2012 Form 990
- 2013 Form 990

Documents are available at tcf.org.

Center for Excellence in Higher Education (DBA Stephens-Henager College, CollegeAmerica AZ, California College San Diego, and CollegeAmerica Colorado/Wyoming)

On March 1, 2013, the IRS received a Form 8940 "Request for Miscellaneous Determination" from a small organization, the Center for Excellence in

Higher Education (CEHE), which had originally been incorporated in Indiana in 2006. CEHE asked the IRS to approve the organization's shift from being considered tax-exempt as a charity to being considered tax-exempt as an educational organization. The law firm submitting the request explained that the change was being requested because CEHE had acquired a set of for-profit colleges owned by Carl Barney or by trusts of which he is the sole beneficiary.

The materials submitted to the IRS describing the organizational changes that were involved in the purchase of Carl Barney's colleges run more than five hundred pages. Within the IRS documents examined for this report, there is no indication that the IRS has verified that the purchased colleges are following the rules of nonprofit governance. The colleges, nonetheless, now describe themselves as dedicated to putting students first because they are nonprofit. Carl Barney's colleges were valued at \$636,147,213 for the purposes of the purchase by CEHE. Of this amount, \$431 million was incorporated into interest-bearing notes committing CEHE to pay Barney over time, and the remaining \$205 million was considered a tax-deductible contribution from Barney to the nonprofit.

As part of the transaction, Barney became the "sole member" of the CEHE corporate entity, with "the right, inter vivos or by testament, to transfer such membership to another person," according to the CEHE's revised articles of incorporation. The revised bylaws state further that Barney, as the sole member, had the authority to name and remove board members. In other words, Carl Barney, who is owed \$431 million by CEHE, fully controlled the supposedly nonprofit CEHE. On September 16, 2015, Barney filed a change in the CEHE articles of incorporation with Indiana secretary of state adding two additional members: Peter LePort and C. Bradley Thompson.

The various campuses owned by CEHE earn revenue of about \$200 million per year, largely from federal programs that are funded by U.S. taxpayers. The various schools run by CEHE have recently come under fire. In 2014, the U.S. Department of Justice joined in a lawsuit against Stevens-Henager College, alleging that the school was using improper bonuses to pay its recruiters.³⁶ In December 2014, Colorado officials sued CollegeAmerica over misleading advertising.³⁷ In June 2015, several CollegeAmerica schools were placed on probation by their accreditor, based on concerns about low job placement rates.³⁸ And as of September 9, 2015, the Department of Education considers CEHE's request to be considered a nonprofit an open case "undergoing substantive review."³⁹

Is the \$636 million a fair price for Barney's colleges? In response to a request for comment, a CEHE official told The Century Foundation that the amount was reviewed by an independent valuation consultant and that the prior board of CEHE were not paid in the sale. Yet according to the organization's financial statements, the bulk of the price, \$419 million, was not for tangible assets, but instead for the colleges' supposedly valuable reputations (accountants apply the term "goodwill" to the difference between a business's purchase price and the fair market value of the tangible assets). In other words, Barney is being paid and claiming a tax deduction for CEHE acquiring the reputations of colleges that are currently the subjects of multiple government investigations.

According to the organization's Form 990 for 2013, the eleven-member board of CEHE, only two of whom are uncompensated, paid Barney, the chairman of the board, more than \$16 million that year: \$11,231,444 of the purchase price with interest, \$5,097,509 for property leases, and a small salary.

SOURCE DOCUMENTS FOR CENTER FOR EXCELLENCE IN HIGHER EDUCATION

- February 2013 Form 1023 and related materials [Application for Recognition of Exemption under Section 501 (c)(3)]
- 2012 Audit Report
- Amendment to the Articles of Incorporation of CEHE
- 2012 Form 990
- 2013 Form 990

Documents are available at tcfor.org.

THE COST OF THE SUBTERFUGE

Covert for-profit colleges cost the public by misleading consumers, dodging taxes, and evading regulations that apply to Education Department financial aid. Further, their actions, and the failure of the federal government to address the problem, seriously undermine the integrity of the system of oversight of colleges and universities, as well as of charitable organizations as a whole.

Shortchanging Consumers

Colleges emphasize that they are public or nonprofit because these labels mean something. The labels certify that everything the college does, including how it spends its money, is overseen by trustees who are not seeking personal financial gain. They are vouching for the institution, and they affirm that there are valid educational or other charitable purposes behind every penny spent by the institution.

Placing ultimate control of colleges in the hands of people who do not have a conflict of interest produces better overall outcomes for students and society. For-profit colleges charge higher prices to the neediest students, have higher dropout rates, yield lower earnings for their graduates, and their students have greater difficulty repaying their student loans. In addition, for-profit colleges divert much of their tuition revenue to profit and marketing rather than education. At more than nine out of ten nonprofit institutions,

the proportion of tuition revenue that is spent on instruction (actual teaching by faculty) is at least 50 percent. The schools examined in this report all fall far below that mark. Herzing was the highest at 39 percent, with Everglades/Keiser at 31 percent, Remington at 31 percent, and Carl Barney's schools spending only 16 percent of tuition revenue on instruction.⁴⁰

Much of what matters most in education, however, is difficult if not impossible to quantify and measure because it involves the unknown potential futures of students. Colleges operate as nonprofit or public entities to prevent students' futures from being sacrificed to enrich an investor who wants a bigger, faster financial return. Operating as a nonprofit does not guarantee that students are treated well, but it increases their chances by eliminating owner and investor pressures.

All four of the colleges in this report are using their claim to nonprofit status as a marketing tool. But if they are not actually controlled by financially disinterested boards, then that layer of consumer protection is absent, and consumers are being misled.

Hiding From Regulations

As described earlier in this report, for-profit colleges are allowed access to federal financial aid only under particular circumstances.

First, for-profit schools must meet a market test, demonstrating that a portion of their revenue comes from somewhere other than federal aid. Even though this requirement has serious loopholes, many for-profit colleges still come very close to transgressing the 90 percent limit on Department of Education revenue, so the threshold is a serious concern that could motivate schools to seek nonprofit status. And in fact, as noted earlier, Remington was quite open that the 90–10 rule was an impetus for seeking to be considered nonprofit.

Second, programs at for-profit institutions are eligible for Department of Education aid only if they are focused on training for a job, leading to gainful employment. They are not eligible to receive federal funding for programs that focus on less tangible benefits, such as intellectual enrichment—only public and nonprofit institutions are trusted to receive public funding to offer degrees involving broader, less measurable goals. Covert for-profit colleges that obtain paperwork identifying them as nonprofit institutions, yet fail to follow nonprofit governance structures, are evading these regulatory structures.

The colleges examined for this report have in recent years received a total of more than half a billion dollars every year in Pell Grants and students loans from the Department of Education. They also take in additional funds from other federal and state agencies, as well as additional tuition payments from students and their families.

If the colleges are not truly the nonprofit entities they claim to be, then many of these funds are being claimed inappropriately.

Evading Taxes

While the consumer protection offered by non-owner control is the most critical issue at play, there are two ways that tax laws treat nonprofits differently from for-profit entities. One is that donations to nonprofits can be deducted from the donor's income, reducing his income tax liability. This is a gain that comes not to the college but to the individual making the donation—though obviously the deductibility also helps the institution's fundraising. At least two of the conversions described in this report involved transactions in which the purchasing nonprofit gave the sellers credit for a "donated" portion of the sale price. If the deductions were taken by the sellers involved in the CEHE and Everglades transactions, the forgone federal income

tax revenue could total more than \$100 million.

The other benefit afforded nonprofit institutions is that their net income—revenue they decide to hold for future charitable purposes—is not subject to corporate income taxes. If the entities examined for this report ultimately have their nonprofit status revoked retroactively, then they will owe back taxes on the net income for every year that nonprofit status was inappropriately claimed. Based on the tax returns examined for this report, this liability could run into the hundreds of millions of dollars.

WHAT SHOULD HAPPEN NOW

The four examples of covert for-profit colleges examined in this report should be enough to suggest swift and decisive action by regulatory agencies. The potential for a flood of conversion efforts makes attention to this issue all the more urgent: As recently as June, a lawyer involved in CEHE's purchase of Carl Barney's schools was being touted by his firm as an expert who can help other for-profit colleges avoid regulations and taxes by converting to nonprofit status.⁴¹ With the gainful employment rule having taken effect in July 2015, more for-profit colleges may search for a way to dodge the requirement rather than comply. Indeed, on an investor call in November 2014, executives of one publicly traded company downplayed the coming regulations, explaining that they had options available, including "organizational structural changes, such as moving to a nonprofit model. . . . [W]e currently have a nonprofit entity that could be used in such a transaction."⁴²

What follows are recommendations for both the IRS and the Department of Education.

IRS Monitoring and Enforcement

The problem of inadequate oversight of charities by the Exempt Organizations Division of the IRS (caused in part by inadequate funding of the IRS) has been a focus of congressional attention and a recent report

by the Government Accountability Office.⁴³ Among other things, the IRS has committed to refining its targeting of reviews of existing nonprofits so that the most significant hazards are more likely to be addressed in a timely manner. The plans do not go far enough, however, because they take into consideration only the IRS's priorities rather than the interests of other federal agencies that rely on IRS determinations. The issue is not just about charities' assertions that donations will be tax deductible, but also the cascade of events that follows such a determination: the public funding that will be going to the institutions, and students and families taking out student loans and committing time and energy to an education that is not what was advertised.

Because the IRS handles tax documents, it is particularly attuned to issues of privacy. But the work of the Exempt Organizations Division is different because nonprofit organizations are required to have some degree of transparency. Particularly when the tax-exempt status of these organizations opens the door to federal funding, the IRS should work hand-in-hand with the relevant federal agencies to make sure that its determinations about organizations' nonprofit status are accurate, valid, and current, based on information available from all sources.

Education Department Monitoring and Enforcement

It is problematic that the Department of Education has been relying solely on IRS letters to determine a college's eligibility for federal financial aid. The agency's own regulations call for a more rigorous review, requiring colleges that wish to be treated as nonprofit to show, in addition to the IRS designation, that "no part of the net earnings" of the school "benefits any private shareholder or individual," and that the school is authorized as a nonprofit institution by the states in which it operates.⁴⁴

With this in mind, the secretary of education should immediately:

- * Aggressively review recent nonprofit conversions to determine regulatory compliance.
- * Place a moratorium on Department of Education approval of any additional institutions seeking to be treated as nonprofit.
- * Revise the documentation and assertions required of institutions claiming nonprofit status.
- * Seek the assistance of states and accreditors to identify any institutions that are claiming to be nonprofit but may be operating in a manner that inappropriately benefits an individual or shareholder.

During the moratorium, the Department of Education and the IRS should develop a joint work plan for the review of nonprofit institutions going forward. The application for access to federal aid (program participation agreement) should require all institutions to attest they are in full compliance with IRS and Department of Education rules regarding nonprofit operations. Internal conflicts of interest and changes in governance should be fully assessed before federal aid is made available to an institution. Finally, any proposed change of ownership involving a nonprofit institution should be subject to public review prior to approval by the department.

It is clear that the 90-10 rule, which applies only to for-profit colleges, is one reason that for-profit college owners are now seeking ways to cloak themselves as nonprofit. In addition to examining more closely any nonprofit conversions, the Department of Education

should also monitor for-profit institutions' relationships with scholarship entities to prevent their inappropriate use in the 90–10 calculations. If the 10 percent portion in the 90–10 rule is achieved with funds controlled, directly or indirectly, by the for-profit—such as through an affiliated nonprofit scholarship fund—then the market accountability mechanism is undermined. In addition, Congress may want to consider applying an improved version of the 90–10 rule more broadly. While nonprofit and public institutions typically have far fewer than 90 percent of their students using federal aid, some do price some programs to take maximum advantage of the federal aid that is available. Requiring some market price accountability in those situations is worth considering.

Longer term, the Department of Education should consider whether the determination of a school's eligibility is well placed in its current location at Federal Student Aid (FSA). FSA's primary task is operational, processing millions of FAFSAs and millions of grant and loan payments. The role of policing schools might be carried out more effectively if it was placed at an enforcement entity, such as the Office of Inspector General. While care should be taken not to expect too much from moving organizational boxes, this may be one case where there could be real benefits. The White House might even consider the idea of linking the school eligibility roles of the Departments of Education, Veterans Affairs, Defense, and Labor.

Robert Shireman is a senior fellow at The Century Foundation working on education policy with a focus on for-profit college accountability, quality assurance, and consumer protections.

Notes

¹ See Committee on Health, Education, Labor, and Pensions, United States Senate, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (Washington, D.C.: Government Printing Office, July 30, 2012), <http://www.gpo.gov/fdsys/pkg/CPRT-112SPRT74931/pdf/CPRT-112SPRT74931.pdf>.

² National Center on Education Statistics, "Undergraduate Enrollment,"

http://nces.ed.gov/ipeds/data/ipeds_indicators/cha.asp, accessed August 31, 2015.

³ U.S. Department of Education, "Obama Administration Takes Action to Protect Americans from Predatory, Poor-Performing Career Colleges," March 14, 2014, <http://www.ed.gov/news/press-releases/obama-administration-takes-action-protect-americans-predatory-poor-performing-career-colleges>.

⁴ Alia Wong, "The Downfall of For-profit Colleges," *Atlantic*, February 23, 2015, <http://www.theatlantic.com/education/archive/2015/02/the-downfall-of-for-profit-colleges/385810/>.

⁵ The requirement that nonprofits reinvest rather than distribute profits is known as a "nondistribution constraint." Henry B. Hansmann, "The Role of Nonprofit Enterprise," *Yale Law Journal* 89, no. 5 (1980): 855–901.

⁶ Michael Johnston, "Wikipedia Revenue Analysis: How a Wiki Could Make \$2.8B a Year," *MonetizePros* blog, <http://monetizepros.com/blog/2013/analysis-how-wikipedia-could-make-2-8-billion-in-annual-revenue/>. In comparison, Wikimedia's Form 990 shows revenue of \$45 million.

⁷ Helmut K. Anheier and Jeremy Kendall, "Trust and voluntary organisations: Three theoretical approaches," Working Paper 5, Centre for Civil Society, 2000, <http://eprints.ulf.ac.uk/29035/>.

⁸ Glenn C. Altschuler and Stuart M. Blumin, *The GI Bill: A New Deal for Veterans* (New York: Oxford University Press, 2009).

⁹ The 85–15 rule is discussed in a Supreme Court ruling that upheld it, *Cleland v. National Coll. of Business*, 435 U.S. 213 (1978), <https://supreme.justia.com/cases/federal/us/435/213/case.html>. For a discussion of more recent versions of the rule see Robert Shireman, "Behind the Fraud Charges against ITT Education," *Huffington Post*, May 13, 2015, http://www.huffingtonpost.com/robert-shireman/behind-the-stock-fraud-ch-b_727134.html.

¹⁰ The National Defense Education Act of 1959 defined an eligible institution of higher education as one that is, among other things, a "public or other nonprofit institution." *The National Defense Education Act of 1959*, Public Law 85-864, U.S. Statutes at Large 72 (September 2, 1958), <http://www.gpo.gov/fdsys/pkg/STATUTE-72/pdf/STATUTE-72-Pg1580.pdf>.

¹¹ *Higher Education Act of 1965*, Public Law 89-329, 89th Cong. 1st sess. (Government Printing Office, 1965), <https://bulk.resource.org/gpo.gov/89-329/00004C64.pdf>.

¹² See the history included in the proposed regulation, Department of Education, "Program Integrity: Gainful Employment; Proposed Rule," *Federal Register* 79 (57) (2014): 16426–643, <http://www.gpo.gov/fdsys/pkg/FR-2014-03-25/pdf/2014-06000.pdf>.

¹³ Robert Rothman, "Bennett Asks Congress to Put Curbs on 'Exploitative' For-Profit Schools," *Education Week*, February 17, 1988, <http://www.edweek.org/ew/articles/1988/02/17/07450039h07.html>. And American Council on Education, "Bennett Cites Abuses, Defaults at Proprietary Schools," *Higher Education and National Affairs*, February 15, 1988.

¹⁴ For more information about the gainful employment rule, which took effect on July 1, 2015, see "Gainful Employment Rule Questions & Answers," Protect Students and Taxpayers website, June 30, 2015, http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2015/06/GainfulEmploymentQA_June-30-2015-5-pages.pdf.

¹⁵ See Career Education Corporation earnings call, November 6, 2014, and Ronald J. Hansen, "GCU Non-profit Would Break New Ground, Enrich Execs," *Arizona Republic*, January 26, 2015, <http://www.azcentral.com/story/money/business/2015/01/17/gcu-non-profit-break-new-ground-enrich-execs/219425454/>.

¹⁶ Technically, an entity organizes itself as a nonprofit under state law, and seeks from the IRS the additional designation of being a "tax-exempt" nonprofit, one that is not subject to corporate income taxes (because it will be reinvesting its earnings into charitable purposes). Depending on the type of IRS approval, donors may also be able to deduct their contributions from personal income taxes.

¹⁷ 26 CFR 601.201(n)(3)(ii).

¹⁸ 26 CFR 601.201(n)(6)(i) and (vii).

¹⁹ *Partners in Charity, Inc. v. Commissioner* 141 T.C. 151, 141 T.C. No. 2 (2013).

²⁰ U.S. Government Accountability Office, "Tax-Exempt Organizations: Better Compliance Indicators and Data, and More Collaboration with State Regulators Would Strengthen Oversight of Charitable Organizations,"

December 2014, <http://www.gao.gov/assets/670/667595.pdf>.

21 Author's communication with staff of the U.S. Department of Education, including a discussion with the Office of the Undersecretary on June 1, 2015.

22 Committee on Health, Education, Labor, and Pensions, United States Senate, *For Profit Higher Education*.

23 Revenue and 90-10 figures were provided by Herzing University in response to a request for comment.

24 Rick Romell, "Herzing University becomes a nonprofit organization," *Milwaukee Journal-Sentinel*, January 2, 2015, <http://www.jsonline.com/business/herzing-university-becomes-a-nonprofit-organization-b99419151z1-287365131.html>.

25 Letter from Ted Mitchell, undersecretary of education, to Representative Rosa L. DeLauro, September 9, 2015, on file with the author.

26 Goldie Blumenstyk, "Another College Takes the Path From For-Profit to Nonprofit," *Chronicle of Higher Education*, January 20, 2011.

27 See report on Education America (Remington) in Committee on Health, Education, Labor, and Pensions, United States Senate, *For Profit Higher Education*.

28 See discussion on page 96 of the application for tax-exempt status.

29 See section XXI of the Stephens Retirement Services "Investment Management and Plan Services Agreement," at pages 128-9 of Remington's Form 1023 source document, available online.

30 The revised bylaws give the "sole member" of Remington Colleges, Inc., the authority to replace trustees. The sole member is Warren Stephens, through his effective control of The Stephens Charitable Trust. See page 70 of Remington's Form 1023: "The sole member of the College is the Jackson T. Stephens Charitable Trust (the 'Trust'), a Sec. 501 (c)(3) organization. Warren Stephens, a member of the Board, is a trustee of, and effectively controls, the Trust."

31 See 2010 Form 1023 in Remington source documents, available online.

32 *International Postgraduate Medical Foundation v. Commissioner*, 56 T.C.M. 1140 (1989).

33 See Shirley Ann Jackson at Rensselaer Polytechnic Institute, in "Executive Compensation at Public and Private Colleges," database at *The*

Chronicle of Higher Education (paywall), http://chronicle.com/factfile/ec-2015/#id:18461_194824_2012_private.

34 "Compensation of Chief Executives at Public Colleges, 2013-13," *Chronicle of Higher Education*, June 12, 2015, A31.

35 Paul Fain, "Dropping Profit," *Inside Higher Ed*, July 17, 2014, <https://www.insidehighered.com/news/2014/07/17/few-profits-have-become-nonprofits-despite-regulatory-environment>.

36 David Halperin, "Justice Department Sues For-Profit Stevens-Henager College," *Huffington Post*, June 9, 2014 (updated), http://www.huffingtonpost.com/davidhalperin/breaking-justice-dept-sue_b_5120249.html.

37 Kieran Nicholson, "CollegeAmerica sued by Colorado AG for 'deceptive trade practices,'" *Denver Post*, February 17, 2015, http://www.denverpost.com/news/ci_27544803/collegeamerica-sued-by-colorado-ag-deceptive-trade-practices.

38 Letters released by the Accrediting Commission of Career Schools and Colleges, June 17, 2015, <http://www.acccsc.org/UploadedDocuments/Commission%20Actions/Probation%20Summary%206-17-15.pdf>.

39 Letter from Ted Mitchell, undersecretary of education, to Representative Rosa L. DeLauro.

40 Based on 2011 data reported by institutions to the Integrated Postsecondary Data System, National Center for Education Statistics. The ratio was determined by taking the enrollment-weighted average of individual campus data for each group of campuses.

41 An unsolicited e-mail from a Los Angeles law firm, sent to the Republic Report (which had written about the topic of conversions of for-profit colleges). A copy of the e-mail is available at TCF online <https://www.dropbox.com/s/fyyj0ouyuoq18r/Email%20sent%20to%20the%20Republic%20Report.pdf?dl=0>.

42 Career Education Corp earnings call, November 6, 2014.

43 U.S. Government Accountability Office, "Tax-Exempt Organizations."

44 34 CFR 600.2.

The Honorable Danny Davis
Rayburn House Office Building, Room: 2159
Independence and S. Capitol St., S.W.
Washington, DC 20515

Dear Representative Davis:

I am writing to you on behalf of the U.S. Soccer Foundation, to request a meeting with you and your staff on **Monday, March 14, 2016** for the Urban Soccer Symposium Hill Day.

The U.S. Soccer Foundation was established in 1994 and serves as the major charitable arm of soccer in the United States. The Foundation is a leader in sports-based youth development, using soccer as a vehicle for social change among youth in underserved communities.

The participants from your district would appreciate the opportunity to discuss sports-based youth development programs they are using to improve the lives of at risk youth in Illinois.

The following participants from your state are expected to attend the meeting:

Girls in the Game

- Alia Abdul-Samad
- Katherine Wajrowski

We would be happy to accommodate your schedule for this meeting on **Monday, March 14th** between the hours of **9:30-1pm**.

Thank you in advance for your kind consideration of this request, and please do not hesitate to contact me with any questions.

Warmly,

Broderick Johnson



Mr. DAVIS. Thank you, Mr. Chairman. Misuse of tax-exempt status for profit is very troublesome. A conversion allows hundreds of millions of taxpayer dollars from the Departments of Education, Defense, and Veteran Affairs to enhance the profit of a few at the taxpayers' expense. We must protect students who are trying to get a high-quality, affordable education from this regulatory blind spot.

Ms. Hill, let me ask you. There are two issues that I am familiar with that have recently arisen. One is the fact that Wheaton College in Illinois attempted to fire a Muslim professor after she posted on Facebook her belief that Christians and Muslims worshipped the same god. The other is at Valdosta State University, bound by free speech laws as a public school. They kicked out 30 black students who silently attended a political event on campus. Where would you see these two incidents fitting into the discussion that we are having?

Ms. HILL. I think these incidents—

Chairman ROSKAM. Will the gentleman yield just for the point of clarification? Just on one quick point?

Mr. DAVIS. Mm-hmm.

Chairman ROSKAM. In the Wheaton College case, it wasn't a Muslim professor, it is a Christian professor who is making doctrinal statements. Just for the record.

Ms. HILL. Yes, Mr. Davis. Your two examples, neither of which involve partisan campaigning, we agree, but there are other things that go on at universities which may be questionable and potentially not consistent with the operation of them as exempt entities. And the question in both of these cases, I think, is can either a faculty member or a whole group of students be severely sanctioned for exercising their own First Amendment rights? We do not lose our First Amendment rights because we attend private universities. We do not lose our First Amendment rights about whether we go to a political meeting.

The question in both cases, in a tax sense, is is the university operating for an educational purpose? And when it seems that actions taken in retaliation are disproportionate—certainly in the case of the 30 black students or, I believe it was, a professor of religion who, yes, I believe was Christian, but was expressing solidarity with people of other faiths, says she believes that Muslims and Christians worship the same god. That sounds to me like something that a professor of religion will spend her professional time addressing, and you would expect it to be.

So, in those cases, what we have here may be a misunderstanding of the core educational mission of the university, and expressing that misunderstanding through punishment of people who are not responsible and have no way of impacting the university.

So what I think is going on here is the question are universities operating for an educational purpose, and there are many ways to be operating for something other than an educational purpose. Universities whose presidents are making \$7 million when they have 300 students, or examples not far from that, may have a private benefit and an inurement problem that has nothing to do with the political activity topic of today's hearings. But inurement I bring up because that, too, is punishable by revocation of exempt status.

So, universities are big and complicated, and there are many, many important issues where completely innocent people are punished for innocent behavior.

Chairman ROSKAM. Thank you.

Mr. DAVIS. Thank you, Mr. Chairman.

Chairman ROSKAM. Mr. Reed.

Mr. REED. Thank you, Mr. Chairman.

Mr. Crowley, my fellow New Yorker, a true good friend of mine, asked the question as to—trying to distinguish Georgetown University's public-private distinction, and I understand that. But the facts are the facts. Georgetown University gets a special designation by us, here in Congress, to get income, to accumulate income, on a tax-free basis. And the people that are donating to that institution under that basis get a tax deduction for doing that. So we do have a government role, even in those private institutions, in the sense that we have designated this special preference to those institutions, going forward.

I would also note for the record that it took over 6 months for Georgetown University to take action here, and yet still has not updated its policy. And it actually took a formal letter from your organization, ma'am, I believe, to move the ball.

So, to say that we don't have a role here, I think, is disingenuous. I think we do have an appropriate role to ask these questions, and I encourage the Chairman to continue down this path.

Now, we have heard a lot from the administrators, we have heard a lot from the academics on this panel. I want to focus on the students, because that is who I really care about in this exchange, the students and the impact that these administrators, these universities who may be abusing this authority they have on campus, have on the students.

So, Mr. Atkins, you are a Bernie Sanders supporter. You feel the Bern.

Mr. ATKINS. Yes, sir.

Mr. REED. I am on the other side of the aisle. I don't feel the Bern, but I respect your position, and I respect your right to have that position.

So, as a student, I want to understand from your perspective. Take me back in time. As you were experiencing this from your institution, from Georgetown University, what was your impact? How did you feel? What did it make you do? Tell me. What impact did it have on you?

Mr. ATKINS. So, like I said, for me, personally, Georgetown's presence in the Nation's capital was a big draw for me to come to law school at Georgetown. I have always been interested in politics, and I thought what better than to be able to study law in the political center of our country, and have as much exposure to politics while I am studying law as possible.

So, this year, when classmates of mine and I decided that we wanted to support Senator Sanders' campaign with the bit of extra-curricular time that we had, we assumed that this would be activity that the school would appreciate, that its—

Mr. REED. Why did you assume that?

Mr. ATKINS. Well, because the school makes clear in most of its promotional materials and in speeches given by administrators

that Georgetown's presence in Washington, D.C. should be a draw to its students——

Mr. REED. To encourage free speech, to encourage the debate. That was your expectation in going to that college campus, correct?

Mr. ATKINS. Precisely.

Mr. REED. And when the university acted differently than that, that changed your interpretation, or your impression of that institution. Did it not?

Mr. ATKINS. It did. And——

Mr. REED. And let me ask you—I don't mean to cut you off, Mr. Atkins, but let me ask you another thing. As a student, did you have equal footing with the administrators, the president of the university?

Did you think you could walk into the president's office and say, "Hey, you know what? I am an equal partner here, you are going to change your policy because I am a student and I have a right to be heard," or did you feel any oppression from the administration, from the university, that, "You know what? I am taking on a pretty large, powerful group here that controls my future, controls my destiny," because your grades are dependent on a lot of the people that are coming out of this program, right?

Did that ever cross your mind as a concern that you may have, as a student?

Mr. ATKINS. I don't know if I would characterize it as feeling oppressed by the administration. I certainly felt an obligation to defer to the administration, and my group——

Mr. REED. Why? Why did you feel an obligation to defer to the administration?

Mr. ATKINS. I mean, for the reasons you expressed, that, you know, I am reliant on the university's good will, to a certain degree, for my professional goals. But also because I assumed that if they had policies in place that would limit our activities in this way, that there must be a well-thought-out and justifiable rationale behind them.

So we did everything we could to kind of respectfully inquire as to what that rationale was so that if we——

Mr. REED. Did you find a rationale from them, in your opinion?

Mr. ATKINS. I still don't think we have found out exactly what the school's motivation——

Mr. REED. And when is the Presidential election over for you? When is Mr. Sanders potentially coming to an end?

Mr. ATKINS. When will he come to an end?

[Laughter.]

Mr. REED. In this Presidential election.

Mr. ATKINS. I don't think we will know that for some time. Certainly not until the Democratic Convention in——

Mr. REED. Well, all the pundits—my point is what happened to all that time you lost. Are you going to get that back? Are you going to be able to advocate for Mr. Sanders, to go back in time? Is the Georgetown administration going to be able to do that for you?

Mr. ATKINS. So we can't go back in time, and I think there is definite evidence of the negative effect that this has had.

Just the other day I was speaking to one of my classmates, telling him about this testimony that I would be delivering today and what it was about, and he expressed grave concern because he said, "You know, I know tons of students that are curious about Bernie Sanders, but just don't know a lot about him or his policies, and I think that if they did know they would be more interested and more open to accepting him and supporting his candidacy." And so, he was expressing, you know, regret that us, as students who wanted to kind of fulfill that service on the campus, were unable to do so.

Mr. REED. And you will never get that back. And with that I yield back.

Chairman ROSKAM. Thank you.

Mr. Rice.

Mr. RICE. Mr. Atkins and Mr. Zuckerman, I just want to say thank you for standing up for your rights. The First Amendment is fundamental to the freedom of the United States. Nothing more fundamental than that. And thank you for standing up for your rights and protecting all of our freedom, and protecting our Constitution.

Ms. Sevchenko, thank you so much for your fierce advocacy on behalf of the First Amendment.

Mr. George, I want to turn to you. And you mentioned that you and your counterpart professor—I can't recall his name—co-host classes.

Mr. GEORGE. I am sorry, I am having difficulty hearing you. I wonder if you could move closer—thank you.

Mr. RICE. You mentioned that you and your co-host professor—I can't remember his name—

Mr. GEORGE. Cornel West, yes.

Mr. RICE. Yes, Professor West co-hosts a class presenting alternate viewpoints and civility in doing that. And I think it would be great if you and Professor West could come here to Congress and teach a couple of those classes, and maybe we could figure out a way to get things done on problems that we mutually agree are problems, and work toward finding more solutions for that.

But can you tell me what the danger is? What are the effects on society if we prevent free expression in universities?

Mr. GEORGE. Well, Congressman, I go into this in some detail in my written testimony. Universities have a certain mission. It really has three parts. It is the discovery of knowledge, or the creation of knowledge; the preservation of knowledge once it has been securely obtained; and then the transmission of knowledge. That is what we do with our students, we try to transmit knowledge to our students.

We believe that is a sacred mission, because it is so important to the well-being of human beings and to the communities that human beings form, including nations. If you want to be a great Nation, you are going to have to have a well-educated people. James Madison said, "Only a well-educated people can permanently be a free people," and he is absolutely right about that.

The trouble with stifling speech on campuses is not only that it is unfair, not only that it is a violation of our precious First Amendment in some cases, where the First Amendment does di-

rectly apply. It is also that it completely undermines the mission of the university. It makes learning impossible. It transforms education into indoctrination. And then we all lose. Not only our students, who are deprived of a true education, but also the entire community, the entire Nation, because we do not get the benefit of a truly educated citizenry.

Mr. RICE. I appreciate that very educated and informed answer, and you have just convinced me that you all need to have a class here for congressmen.

Ms. Hill, you know, clearly, we have to do whatever we can to protect the First Amendment on university campuses. The flip side of that coin is I can understand how administrators may be confused, because, as you said, there are limits on free speech. Right? It can't go to the point of harassment, correct? And certainly you can't yell fire in a crowded theater, and those other examples.

And then the consequence of losing your tax-exempt status is terrible. So how do we correct this problem? How do we clear up the confusion and correct this problem, so we don't face this anymore? What would you suggest?

Ms. HILL. Congressman Rice, I share your concern about the ongoing and difficult problems posed by reconciling compliance with reasonable laws and the search for greater liberty. That is really what we are talking about. That is what the First Amendment is there to do.

And I have been much struck and often assign to my classes Justice Souter's remarks at a recent Harvard graduation available in the Harvard Law Review on trying to reconcile the competing demands and competing promises of the Preamble to the Constitution, "We the people of the United States, in order to form a more perfect union, secure the national defense, secure liberty, provide for the general welfare," et cetera, "do ordain and establish this Constitution." Justice Souter points out there are inherent conflicts among the values, and that is what democracy is there for.

Now, in universities, I do believe that a commitment to open expression is absolutely fundamental. But I do not believe that we have to open our universities up to have its resources co-opted by people with private agendas. And I believe, with all due respect, that campaigning for public office should not just be a reason to use university resources willy nilly, especially by the people who can make it seem as though the university is complicit in this.

Now, my husband has run for office. I have been a political wife. I understand about campaigning and about the feeling that America would have been a better place, surely, if my husband had won that election. But I also understand that that campaign should have been, as it was, funded by its own contributors, and not by the resources of the universities in that particular district.

And so, I am convinced that a rational interpretation of the prohibition on political activity and the direct and indirect private benefit that can go with this to candidates and political parties is a rational policy, but I am not convinced that it has anything to do with students handing out leaflets for candidates.

Chairman ROSKAM. Thank you.

Mr. Kelly.

Mr. KELLY. Thank you, Chairman, and thank you for allowing me to participate today. I really am concerned with Mr. Atkins and Mr. Zuckerman.

And Professor, when you were talking you referenced Judge Learned Hand. And I am going to read something, because I think this goes to the very essence of what the meeting is about today. And I know you know what I am talking about. It goes to a speech that was given in 1944 by the judge, and it is called, "I Am an American Day." This is what the judge said: "What do we mean when we say that, first of all, we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws, and upon courts. These are false hopes. Believe me, these are false hopes. Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it. No constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it."

Isn't it stunning that you have to come, Mr. Zuckerman and Mr. Atkins, to Congress? Your right to free speech, whether I agree with what you say or whether I don't agree with what you say, that is the beauty of who we are, as Americans. That goes to the very fabric of what this country was founded on. And especially in our universities. But we can censor you when it comes to funding. And by tax laws and by codes we can make it impossible for you to have that free discourse, to have that disagreement, to have that argument out in the open.

So I think it is really important that the people that are sitting here today understand that we listen to the people. We represent the people. In my district, 705,687 Americans sent me here—or at least a portion of them—to represent them.

Mr. Zuckerman, how did this affect you? Because when we do attack you at the very base of who you are and what you believe and what we believe in as Americans, how does that leave you feeling at the end of the day?

Mr. ZUCKERMAN. Well, frankly, I just think it is completely unacceptable for any university—especially public, legally. But from a moral perspective, it is unacceptable that any university would attempt to either censor its students—that is why we are there, to discuss, to learn, to listen to others' ideas, scrutinize our own—and for any university to shut that down or to try to impose orthodoxies that would pressure us into remaining silent is just not a good use of the—it is not a good use of the university's trust. It is betraying our trust in them.

Mr. KELLY. Yes. So I—my real point is you should never be limited. You should never, ever feel that you don't have the ability to do this, and to speak out, especially on a university campus, especially in the United States of America.

So, Mr. Atkins, you're feeling—at Georgetown University, when you—when they play this run-out-the-clock on you, what is your feeling now, as an American citizen? How were you treated? Was this really the America that you believed in? Is this really the America that you want to defend? Is this really the America that you want to live in and raise your children in? And is this really

the America that at one point four million people in uniform died to preserve?

Mr. ATKINS. I think there is an unfortunate kind of American cliché that has arisen that, you know, there is only two things you don't talk about: religion and politics. And I think that many of these policies are perhaps related to that sort of cultural norm, which I think is incredibly unfortunate, and goes against what the country was founded on.

So in the case of my experience, you know, what was most troubling to me is I can certainly understand confusion as to what 501(c)(3) would obligate Georgetown to do. I can understand being risk adverse, and being concerned about retaining that tax exemption so that they could fulfill the entirety of their mission.

But what was concerning to me is I didn't get a sense from the administration that they were concerned about how this affected our rights to engage in very valuable political expression. And it was that that kind of struck me and made me concerned about why wouldn't the university want to help us to engage in this type of activity.

Mr. KELLY. Well, I want to congratulate both of you for standing up. And I think it is absolutely chilling that we have to have this kind of a hearing to expose what is going on.

And I think, when I look back on my college days, that if we ever were suppressed, or not able to express the way we felt, you would have to go to the very depths of who it is we are, as a people. Because we can, through government, suppress. We can censor. We can do almost anything to you we want, and yet hold these high, high things that we—these are great things about America.

We know that, enshrined in the very Bill of Rights—the very first amendment to the Bill of Rights allows us to have free speech. What you had to go through is absolutely ridiculous. And I don't care what college it is, private or public. All of these folks are influenced in some way or another by the Tax Code. So I don't want anybody ever to be confused about why we would hold this today. If not us, who? Who would hear you? Who would stand up for you? Who would defend you in the public place?

You both do great work. And while we may not share the same opinions, I will tell you what. We share the same love of country, and the same commitment that if it is not us, if it is not our generation right now, who is it that is going to defend it in the future? So I thank you so much.

And Chairman, thank you so much for allowing me to be here today. This is absolutely the most timely thing we can do because we are being chopped off at the knees, and so many opportunities we have to express ourselves in free speech.

So, all of you on the panel, thanks so much.

Professor George, it is good to see you. But I—when you said that about Judge Hand, that sparked in my memory what I had heard one time, and I read it, and I said, "My gosh, this comes to it." When it dies in our hearts, when it dies in who we are, when it is no longer the fabric of who America is, then we are no longer America. So you can forget the red, white, and the blue, and all the things that we talk about all the time. If we can't defend who we

are, if we can't protect the freedom of speech, then we have no business serving in this House.

So I thank you so much and——

Chairman ROSKAM. Thank you.

Mr. KELLY. Chairman, I yield back.

Chairman ROSKAM. Thank you, Mr. Kelly. Thank you to the witnesses. I just have a couple of points and a couple of questions, actually.

One point is it is interesting. The House of Representatives has rules to protect itself from being marginalized. In other words, when we go to the House floor and we debate, I am able, under the House rules, if time is allotted to me, to make my points. I am protected from someone impugning bad motives to me when I make my points, regardless of the points that I make. House rules prohibit someone from questioning my motives. And if they do question my motives, I have the right to "have their words taken down." That is a very compelling thing.

So we have, in the House of Representatives—it is rough and tumble and sharp-elbowed and all that sort of stuff, but we have in the House of Representatives, by rules, those sorts of things, Mr. Zuckerman, that you are trying to create, that you have been successful in creating on Princeton campus. That is the capacity to go back and forth.

Mr. Atkins, I am just impressed by your capacity to spot an issue and to spot an issue early and not be intimidated and not be put off. And I was reading your email exchange back and forth with Georgetown Law, and you did it twice. You were like a dog with a bone. You saw it and you stuck with it. You said, "It seems that the rules and guidance pertain almost entirely to the institution itself and its faculty and staff." That is your reply back to Georgetown Law when they were stiff-arming you. And then you did it—some time later you said, "We are interested in exploring reasonable ways that we, as students, can permissibly engage in conduct which the institution itself is proscribed from." Great insight.

Now, here is the point. This is Georgetown Law School. This is what Mr. Crowley has described, and I think everybody would, this preeminent institution. And if they are blind to it, and it takes a law student to say, "I don't know, this sure doesn't seem right," we have a problem.

I mean, Professor Hill, you made the point that this is pretty clear. You know, there has been a lot of either private letter rulings or other things, and a lot of guidance.

But for some reason this is not penetrating down. And there is a lot of reasons for it, probably. Some of them—institutions tend to be risk-adverse. They think Mr. Atkins is going to go away. They think Mr. Zuckerman is going to run out of steam and graduate and so forth. But that is the responsibility of this Committee, to make sure that we are doing the things that we do, number one, to educate, number two, to make sure we are holding these schools to a high standard, and number three, trying to create an environment where people can discuss.

Now, Professor George, I have a question for you. What happens, or what is university life like, or what can it be like if it dissolves into—if it devolves into political correctness, the type of political

correctness where faculty is intimidated, students are intimidated, and it is not an environment where you are free to think? Can you just give me a sense—and you mentioned it a minute ago—when political correctness one way or the other becomes—moves from—moves into indoctrination?

In other words, “You don’t think the right way and you are not welcome here. And if you choose to think that way, you can keep your thoughts to yourself.” What is that, if that becomes sort of the norm on college campuses today? What does that look like for us?

Mr. GEORGE. Well, what happens is that education just ceases to take place. And instead, you get indoctrination. So the new students coming in are taught that there is a party line. They are taught not only formally, by—but informally. The culture that has been created communicates to them the idea that there is a party line, it is your job to believe it, it is not your job to question it, get on board with the program. It is absolutely inconsistent with education.

For some of the reasons that Mr. Kelly articulated when he quoted from that wonderful speech by Learned Hand, what Hand is getting at there is the idea that the culture matters, the underlying culture really is determinative of the health of an institution. And that applies to an academic institution, as much as it does to other institutions.

To educate a student you need to challenge that student’s ideas, challenge the ideas of students who are on the other side, encourage the student to challenge your ideas and beliefs, and create what philosophers call a dialectic, an argument that goes back and forth, not with one side necessarily trying to defeat the other and win, but with both sides trying to understand more deeply what the truth of the matter is. Knowledge-seeking, wisdom-seeking, that is what it is all about.

And, as Hand pointed out, you cannot engage in that if you are so convinced that there is no possibility that you could ever be wrong that you are not listening.

Chairman ROSKAM. So I think it is important for us to make a connection. And it didn’t occur to me until I was listening to all of you discuss your experiences and your insights.

I think it is important for us to understand the relationship between Mr. Atkins’ experience—that is, you know, they basically patted him on the head and said, “How nice for you, but you are not going to distribute your candidate’s literature here,” make that connection, which is sort of condescending and an attempt to marginalize within the culture, all the way over to political correctness that becomes indoctrination. Some would say, oh, that is too big of a leap, you are overstating. I don’t think we are overstating. I don’t think we are making it too big of a leap.

Mr. Zuckerman, one of the things that it seems to me you are an example of, whether you are articulating it this way or not, is you see the danger of the flashpoint of political correctness that becomes overwhelming and destructive to campus life. Can you just highlight a little bit?

Am I getting this right? Do you see a relationship? Or am I overstating this, or—

Mr. ZUCKERMAN. No, I would say you are absolutely getting it right. Some of the demands that have been made at Princeton would basically institutionalize this political correctness. We will take the example of a demand for a mandatory class in the studies of marginalized people. So that brings up the first question of who counts as marginalized. Presumably, the protesters, they have said the example of marginalized people would be either African Americans or the LGBT community.

Now, are they actually marginalized? Many of my African American friends say, "No, we are not marginalized." Many of my LGBT friends also don't think they are marginalized. But the university would be taking this notion of marginalization, forcing it on students who disagree with it, and those students, presumably, when they would voice their disagreement in class, are going to be mocked for countering the official university narrative, or probably going to be graded down by their professors, simply because they are rebutting the central premise of the class, which is this is marginalization. When you say no you are going to suffer the consequences, and that is very destructive to the flow of ideas.

Chairman ROSKAM. You know, it seems—I am sitting here with Ranking Member Lewis. And you, who are students, you may not know his journey, but it is a fascinating one. And he has an autobiography that I commend to you.

But it seems to me that his background of taking on a politically-correct situation decades ago was transformational for all of us. And we have to make sure that that capacity, in that sense, taking on a racist system, was absolutely transformational, and he had the capacity to do that, and to break boundaries and to make America better for everybody. We have to protect that, because you can imagine how this can become so debilitating.

Let me give you an example. It is known to me that a student was in a university setting recently, and had a discussion. And the question was, "Who is privileged?" You can imagine this today, in this general milieu. "Who is privileged?" And after listening to the discussion, the student made this point. "Hey, we are American college kids. We are all privileged." It was a scandal, basically, that this student asserted this in the classroom.

And the student was made—you know, pointed out, "Look, I am aware of orphanages overseas where kids aren't eating on the weekends. That is the standard. We need to operate on a global standard. By definition, we are all privileged. We are American college kids." And the student was marginalized, and the professor didn't protect the student, and so forth. And it became this absurd sort of thing where to make that sort of argument the student was accused of being insensitive and, "You don't understand," and so forth. And I think that if we have a situation where our college life devolves into that, that is just not helpful. And it is something that we need to inquire about, it is something that we need to highlight.

And this notion of academic freedom, and freedom of speech on college campuses is really something to celebrate. It is something to defend, because there is something in it for all of us. There really is something in it for all of us.

So, on behalf of our whole Subcommittee, I just want to thank each one of you for your willingness to come forward and to share

your perspectives with us. For those that are listening or watching and have a story that they want the Committee to know about, you can just send us an email at, *campus.speech@mail.house.gov*.

And with that, we are adjourned.

[Whereupon, at 11:42 a.m., the Subcommittee was adjourned.]

[Submissions for the Record follow:]



March 16, 2016

VIA EMAIL

The Honorable Peter Roskam
 Ranking Member John Lewis
 Chairman, Subcommittee on Oversight
 House Committee on Ways and Means
 1102 Longworth HOB
 Washington, DC 20515
waysandmeans.submissions@mail.house.gov

**Re: Written submission for the record for the Oversight Subcommittee's Hearing on
 "Protecting the Free Exchange of Ideas on College Campuses" on March 2, 2016**

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for holding a hearing on protecting the free exchange of ideas on college campuses. As Director of the Alliance Defending Freedom Center for Academic Freedom, I have worked for over a decade to ensure that religious and conservative students and faculty on college campuses may exercise their rights to speak, associate, and learn on an equal basis with all other students and faculty.

Founded in 1994, Alliance Defending Freedom ("ADF") is a non-profit, public interest legal organization that provides strategic planning, training, funding, and direct litigation services to protect our first constitutional liberty—religious freedom. ADF's Center for Academic Freedom has litigated many groundbreaking student and faculty speech cases.¹ In fact, since ADF launched the Center for Academic Freedom in 2006, we have litigated and won over sixty-four cases and successfully resolved over 200 legal matters involving students and faculty from all fifty states. While anti-speech policies have been used to violate the rights of students and student groups from a wide variety of views, pro-life student speech is increasingly singled out for discrimination and censorship.

University speech codes – policies that prohibit speech the Constitution clearly protects – enable administrators to silence political and religious speech based on the subjective reaction of listeners. In April and May 2014, Abolitionists4Life, a registered student organization at Boise

¹ See, e.g., *OSU Student Alliance v. Ray*, 699 F.3d 1053 (9th Cir. 2012) (invalidating prior restraint on student speech); *Adams v. Trs. of Univ. of N.C.-Wilmington*, 640 F.3d 550 (4th Cir. 2011) (finding retaliation against professor for his speech); *Badger Catholic v. Walsh*, 620 F.3d 775 (7th Cir. 2010) (finding student activity fees discrimination); *DeJohn v. Temple Univ.*, 537 F.3d 301 (3d Cir. 2008) (enjoining campus speech code).

Chairman Roskam and Ranking Member Lewis
March 16, 2016

State University hosted two events in the main quadrangle of campus. The events included flyers and signs advocating a pro-life message. But university administrators decided that some of the material was controversial, and so they required Abolitionists4Life to place "warning signs" around the events to prevent them from triggering negative emotive responses in students. Driving the administrators' decision was a Boise State policy that authorized the Vice President of Student Affairs "to require a student organization or individual to utilize reasonable methods to allow the public a choice about viewpoint [sic] or receiving certain materials that may not be suitable for a general audience."² The university eventually settled the case out of court and removed the policy that enabled the administrators' actions.

In addition to regulating what students and faculty may say through unconstitutional speech codes, many universities also regulate where students may speak on campus, limiting their expression to incredibly small zones. For example, during the 2013–2014 academic year, Students for Life USA, a student organization at the University of South Alabama, sought to temporarily place a "cemetery of innocents" on campus to memorialize children lost to abortion.³ Although similar displays by other groups were permitted, the university refused to allow Students for Life to hold the event in its desired location, a park-like area of campus, and instead directed it to use the official speech zone. Administrators did this because university policy closed most of the outdoor areas of campus to free expression, except for the speech zone, which consisted of less than 0.1% of campus. While the group's case is ongoing, university speech zones are a common problem throughout the country, despite the fact that they are regularly struck down as unconstitutional.⁴

Universities also impose excessive fees on student speech deemed "controversial." In 2013, UB Students for Life, a registered student organization at the University at Buffalo, held a debate on the morality of abortion. Because some students opposed the event and posted negative commentary on social media, the university required security guards for the event. Even though the debate was a success and the security guards were unnecessary, after the event the

² *Abolitionists4Life v. Kustra*, No. 14-cv-257 (D. Idaho), Complaint Ex. 5 at 050, available at <http://www.adfmedia.org/files/Abolitionists4LifeSuit.pdf>.

³ *Univ. of South Alabama restricts 'controversial speech'*, ADF, Aug. 25, 2014, at <http://www.adfmedia.org/News/PRDetail/9281>.

⁴ See, e.g., *Hays Cnty. Guardian v. Supple*, 969 F.2d 111, 117 (5th Cir. 1992) ("The [Southwest Texas State University] campus's function as the site of a community of full-time residents . . . suggests an intended role more akin to a public street or park than a non-public forum."); *Roberts v. Haragan*, 346 F. Supp. 2d 853, 861 (N.D. Tex. 2004) (finding "park areas, sidewalks, streets, or other similar common areas" of Texas Tech University to be public forums irrespective of whether the University has so designated them or not.); *Pro-Life Cougars v. Univ. of Hous.*, 259 F. Supp. 2d 575, 582 (S.D. Tex. 2003) (finding university grounds are public fora designated for student speech); *Khademi v. S. Orange Cnty. Cmty. Coll. Dist.*, 194 F. Supp. 2d 1011, 1024 (C.D. Cal. 2002) (finding "no doubt" that the "generally available" areas of a community college campus are public fora as they are open to the public); *Univ. of Cincinnati Chapter of Young Am. for Liberty v. Williams*, No. 1:12-cv-155, 2012 WL 2160969, at *5 (S.D. Ohio June 12, 2012) (holding university "interior sidewalks and public exterior spaces" are designated public fora for students).

Chairman Roskam and Ranking Member Lewis
March 16, 2016

university required the group to pay nearly \$650 in security fees.⁵ University policy enabled these fees for any event deemed subjectively “controversial” by university staff. The students sued the university in federal court, alleging that the imposition of security fees was viewpoint discrimination, and the case settled with the university refunding the security fees and removing the unconstitutional portion of the security fee policy.

University-imposed financial burdens stifle student expression in another way too. Despite the fact that the United States Supreme Court ruled twice that mandatory student activity fees must be allocated to student group activities on a viewpoint neutral basis,⁶ student groups continue to suffer discrimination for religious or politically-conservative speech.⁷ In February 2013, Eastern Michigan University denied student fee funding to a Students for Life group that sought to bring a display about abortion to campus.⁸ University officials made the decision based on the group’s “political or ideological” views, and despite the fact that the university previously funded events discussing welfare programs, women’s and abortion rights, student activist training, and race-conscious issues among other things. After Students for Life filed a federal lawsuit, the university settled by funding the group’s event and changing the offending policy.

Finally, pro-life student groups are not the only recipients of discriminatory treatment and censorship on college campuses. ADF has represented many types of students and student groups advocating religious and political ideas. In fact, ten years ago today, ADF filed a federal lawsuit on behalf of two Georgia Institute of Technology students, Ruth Malhotra and Orit Kwasman (Sklar).⁹ Their experience at Georgia Tech was marred by censorship of their conservative political views, discriminatory exclusion from the Institute’s mandatory student fee funding programs, restriction of their speech to one small amphitheatre on campus, and explicit hostility to their Christian and Jewish beliefs about marriage and sexuality.

Mss. Malhotra and Kwasman eventually won their case against Georgia Tech and have gone on to become active members in our nation’s political dialogue. But in the ten years since their case was filed, ADF has seen an increase in the hostility to free expression on campus. Look no further than the student-led requests for censorship at Yale and University of Missouri last fall. It is our fear that far too many students will not bravely stand up for their free speech rights as Students for Life and Mss. Malhotra and Kwasman have done. And our nation will

⁵ Joshua Rhett Miller, *University at Buffalo charged pro-life student group \$650 in ‘unconstitutional fees,’ lawsuit alleges*, Fox News, July 2, 2013, at <http://www.foxnews.com/us/2013/07/02/university-buffalo-charged-pro-life-student-group-650-in-unconstitutional-fees.html>.

⁶ *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217 (2000); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995).

⁷ *Badger Catholic v. Walsh*, 620 F.3d 775 (7th Cir. 2010).

⁸ Katrease Stafford, *EMU settles lawsuit with student group after funding denial for anti-abortion exhibit*, MLive, Nov. 21, 2013, at http://www.mlive.com/news/ann-arbor/index.ssf/2013/11/emu_settles_lawsuit_with_stude.html.

⁹ Robert Shibley, *Georgia Tech Ordered to Pay \$203,734.14 for Violating Students’ Rights*, FIRE, Dec. 30, 2008.

Chairman Roskam and Ranking Member Lewis
March 16, 2016

suffer as a result, for what happens on campus does not stay on campus. Students who matriculate under policies of censorship today will import those ideas into our society tomorrow.

Free expression is in danger on America's college campuses. It is time to restore the "marketplace of ideas" and remove barriers to free political and religious expression. Thank you for holding this important hearing.

Very truly yours,

David J. Hacker
Senior Counsel
Director of Center for Academic Freedom
ALLIANCE DEFENDING FREEDOM



CHRISTIAN
LEGAL SOCIETY

Seeking Justice with the Love of God

March 16, 2016

The Honorable Peter Roskam
Chairman, Subcommittee on Oversight
The Honorable John Lewis
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515

Re: Written statement of the Christian Legal Society for the printed record for the
Oversight Subcommittee's Hearing on "Protecting the Free Exchange of Ideas on College
Campuses," held on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for holding a hearing on this most important topic regarding the need to protect the free exchange of ideas on college campuses. The Christian Legal Society submits this written statement for the printed record of the hearing. As Director of the Center for Law & Religious Freedom of the Christian Legal Society, I have worked to protect students' right to meet for religious speech on college campuses for nearly thirty-five years. During that time religious student groups have been the subject of ongoing discrimination by college officials who oppose the free flow of religious ideas on campus.

The Christian Legal Society (CLS) has long believed that pluralism is essential to a free society and prospers only when the First Amendment rights of all Americans are protected, regardless of the current popularity of their speech or religious beliefs. For that reason, CLS was instrumental in the bipartisan passage of the Equal Access Act of 1984, 20 U.S.C. §§ 4071-4074, that protects the right of all students to meet for "religious, political, philosophical or other" speech on public secondary school campuses. *See, e.g., Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (EAA protects religious students); *Straights and Gays for Equality v. Osseo Sch. No. 279*, 540 F.3d 911 (8th Cir. 2008) (EAA protects LGBT students).

CLS is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 public and private law schools. CLS law student chapters typically are small groups of students who meet for weekly prayer, Bible study, and worship at a time and place convenient to the students. All students are welcome at CLS meetings. As Christian groups have done for nearly two millennia, CLS requires its leaders to agree with a statement of faith, signifying agreement with the traditional Christian beliefs that define CLS. For that reason, for two decades, CLS student chapters have frequently been threatened with exclusion from campus because they require their leaders to be Christians.

Brief overview of the problem: From the 1970s to the mid-1990s, the Establishment Clause was used by some university administrators to justify discriminatory treatment of religious student groups. But after the Supreme Court removed the Establishment Clause as a credible justification for excluding religious groups in *Widmar v. Vincent*, 454 U.S. 263 (1981), and *Rosenberger v. University of Virginia*, 515 U.S. 819 (1995), some university administrators turned to university nondiscrimination policies as the new tool for opposing religious groups on campus. Beginning in the early 1990s, religious student groups, including CLS student chapters, began to encounter some university administrators who *misused* nondiscrimination policies to exclude religious student groups from campus, simply because they required their leaders to agree with their religious beliefs.

It is common sense and basic religious liberty – not discrimination – for religious groups to expect their leaders to share their religious beliefs. Nondiscrimination policies are good and essential. Nondiscrimination policies are intended to *protect* religious students, not *prohibit* them from campus. The problem is not with the nondiscrimination policies. The problem is that colleges *misinterpret* and *misuse* these policies to exclude religious student groups from campus. In the name of “tolerance,” college administrators institutionalize religious intolerance. In the name of “inclusion,” college administrators exclude religious student groups from campus.

Basic religious liberty encompasses the right of religious groups to choose leaders who agree with their religious beliefs and religious standards of conduct. Indeed, it should be common ground, particularly among those who advocate strong separation of church and state, that government officials, including public college officials, should not interfere with religious groups’ internal selection of their leaders.

The leadership of any organization affects its ability to carry out its mission. This is particularly true for religious groups because leaders conduct the Bible studies, lead the prayers, and facilitate the worship at their meetings. To expect the person conducting the Bible study to believe that the Bible reflects truth seems obvious. To expect the person leading prayer to believe in the God to whom she is praying seems reasonable. Both are a far cry from any meaningful sense of discrimination. Yet some university administrators woodenly characterize these common sense expectations and basic religious liberty principles as “religious discrimination.”

An important purpose of college nondiscrimination policies is to protect religious students on campus. When universities misuse nondiscrimination policies to exclude religious student groups, they actually undermine nondiscrimination policies’ purposes and the good they serve. Such misuse of nondiscrimination policies is unnecessary. Reflecting an appropriate sensitivity to religious liberty, most nondiscrimination laws, such as Title VII of the federal Civil Rights Act of 1964, simultaneously prohibit discrimination while protecting religious groups’ ability to maintain their religious identities. In interpreting their policies, college administrators should show a similar tolerance and respect for religious groups and their basic religious liberty to be led by persons who share their religious beliefs.

Nondiscrimination policies and students’ religious liberty are eminently compatible. As a commendable best practice, many universities embed robust protection for religious liberty within their nondiscrimination policies, thereby creating a sustainable environment in which

nondiscrimination principles and religious liberty harmoniously thrive.¹ Because it is possible to have strong nondiscrimination policies *and* religious liberty, the better approach is to facilitate both, rather than demand that religious liberty lose.

Two specific examples at University of Montana School of Law and Boise State University: In 2008, the Boise State University student government threatened to exclude several religious organizations from campus, claiming their religious leadership requirements were discriminatory. The BSU student government informed one religious group that its requirement that its leaders “be in good moral standing, exhibiting a lifestyle that is worthy of a Christian as outlined in the Bible” violated the student government’s policy. The student government also found that the group’s citation of Matthew 18:15-17, in which Jesus is quoted, also violated the policy. The student government informed another religious group that “not allowing members to serve as officers due to their religious beliefs” conflicted with the student government’s policy. In 2009, to settle a lawsuit, BSU reversed course and agreed to allow religious organizations to maintain religious criteria for leaders. In June 2012, however, BSU informed the religious organizations that it intended to adopt a new policy, which would effectively exclude religious organizations with religious leadership requirements. In March 2013, the Idaho Legislature enacted legislation to protect religious organizations from exclusion. Idaho Code § 33-107D.

Two former Boise State University students have described their religious organizations’ struggles to be recognized in letters that are attached to this statement, along with a letter from a former student describing the problem as it arose for one CLS student chapter at the University of Montana School of Law.

Religious liberty on college campuses is at a critical tipping point: That this is an ongoing national problem is demonstrated by the Supreme Court’s decision in 2009 to hear *Christian Legal Society v. Martinez*, 561 U.S. 661 (2010). By a narrow 5-4 majority, the Court declined to address the issue of nondiscrimination policies. All nine justices agreed that the Court was *not* deciding the nondiscrimination policy issue. *Id.* at 678 & n.10; *id.* at 698 (Stevens, J., concurring); *id.* at 704 (Kennedy, J., concurring); *id.* at 728-29 (Alito, J., dissenting) (joined by Roberts, C.J., Scalia, J., and Thomas, J.).

Instead, the Court confined its decision to a quirky policy, unique to Hastings College of the Law, which required *all* student groups to allow any student to be a member and leader of the group, regardless of whether the student agreed with – or actively opposed – the values, beliefs, or speech of the group. Under this “all-comers” policy, no student group at Hastings had any associational rights whatsoever. According to Hastings administrators, the Democratic student group must allow a Republican to be president, just as CLS must allow any student to be its president, regardless of whether the student agreed with CLS’s religious beliefs.

Five justices upheld this novel policy that wiped out all student groups’ First Amendment rights. But in doing so, the majority was unequivocal that if a university allows *any* exemption to its “all-comers policy,” it cannot deny an exemption to a religious group. *Id.* at 694, 698-99; *id.*

¹ Many universities have policies that protect religious groups’ religious leadership criteria. The University of Florida has a model nondiscrimination policy that strikes the appropriate balance between nondiscrimination policies and religious liberty, which reads: “A student organization whose primary purpose is religious will not be denied registration as a Registered Student Organization on the ground that it limits membership or leadership positions to students who share the religious beliefs of the organization. The University has determined that this accommodation of religious belief does not violate its nondiscrimination policy.”

at 704 (Kennedy, J., concurring). The four dissenting justices, Chief Justice Roberts and Justices Alito, Scalia, and Thomas, would have held that nondiscrimination policies cannot be used to prevent religious groups from choosing their leaders according to their religious beliefs. And in 2012, the Supreme Court ruled unanimously, in the context of the “ministerial exception,” that nondiscrimination laws cannot be used to prohibit religious organizations, such as a church or synagogue, from deciding who its leaders will be. *Hosanna-Tabor Lutheran Church and School v. EEOC*, 132 S. Ct. 694, 710 (2012).

Conclusion: Our nation’s colleges are at a crossroads. They can choose to respect students’ freedoms of speech, association, and religion. Or they can misuse nondiscrimination policies to exercise intolerance toward religious student groups who refuse to abandon their basic religious liberty. The road colleges choose is important not only for the students threatened with exclusion -- and not only to preserve a diversity of ideas on college campuses -- but also because the lessons taught on college campuses inevitably spill over into our broader civil society.

The genius of the First Amendment is that it protects everyone’s speech, no matter how unpopular, and everyone’s religious beliefs, no matter how unfashionable. When that is no longer true—and we seem dangerously close to the tipping point – when nondiscrimination policies are misused as instruments for the intolerant suppression of religious speech and traditional religious beliefs, then the pluralism so vital to sustaining our political and religious freedoms will no longer exist.

Respectfully submitted,
/s/ Kimberlee Wood Colby
 Kimberlee Wood Colby
 Director, Center for Law & Religious Freedom
 Christian Legal Society

October 13, 2016

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice
The Judiciary Committee of the United States
House of Representatives
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks:

My name is Justin Ranger. I have lived in Idaho since 2001. I graduated from Boise State University in the Spring of 2009 with a major in Philosophy and a minor in Mathematics. While I was a student, I was the President of the student club, Cornerstone Ministry.

During my involvement with Cornerstone Ministry, I desired to create an environment that would engage students, and would contribute to campus life in general. The purpose of Cornerstone Ministry was to hold Bible studies, book discussions, prayer meetings, and to distribute free literature to students on campus. The focus of the club was to engage students academically and intellectually on matters that related to our religious views. This we believed added to diversity and contributed to campus life.

At the end of my sophomore year at Boise State, some other students and myself began the process of starting a new religious club on campus, The Veritas Forum. We used as a template the constitution of Cornerstone Ministry which was a fully recognized student club. The new constitution was rejected based on BSU's interpretation of the non-discrimination clause. In our dialogue with BSU staff and student Judiciary members we pointed out that the new constitution was modeled on a constitution of a club which had already received full recognition. The constitution for Cornerstone Ministry was reviewed by BSU and declared to be discriminatory as well. After submitting several revisions of our constitution in an attempt to be fully compliant with BSU's non-discrimination clause, it became apparent that the club would not be recognized simply because we required its officers to agree to the beliefs and purpose of the club. Eventually the Cornerstone Ministry club was de-recognized as an official club on campus.

After Cornerstone Ministry was de-recognized we lost all of the rights and benefits of being an officially recognized club, e.g., reserving meeting rooms on campus for free, submitting flyers to be posted on bulletin boards, receiving discounts on catered food for events, being able to recruit students at orientations, etc. Furthermore, while our constitution was under review, the time of the few students that were still involved with the club was consumed in dealing with this issue, rather than fulfilling the purpose of the club. Not only did the size and vitality of the club diminish, but the club's ability to benefit student life was severely limited during this time.

Cornerstone Ministry could not withhold the statement of belief from our constitution since it is what determines our identity and the purpose of the club. Although, we were assured that it was unlikely that anyone who did not agree with our beliefs or the purposes of the club would attempt to run for an office in our club, it was a matter of honesty, integrity, and transparency to be upfront with the criteria by which officers would be considered. Since BSU would not accept our criteria for officers before the settlement agreement, we were forced to be de-recognized.

Thank you for caring about this issue, and hearing about the plight of the club that I served.

June 11, 2015

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice
The Judiciary Committee of the United States
House of Representatives
2141 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Franks:

My name is Jesse Barnum, and I graduated from Boise State University in 2009 with a B.A. in Philosophy and minors in German, Latin, and History. I was a member of the Cornerstone, a religious student organization, from 2006 until I graduated in 2009. I was also one of the organizing members of the Veritas Forum from 2007 through 2009. The Veritas Forum was a religious student organization who applied for official recognition as a student organization, but was denied that status.

As a student, religious organizations helped meet my need for community, and they provided me encouragement and support. They were an integral part of my success as a student, and without them I would not have engaged in the broader campus community to the extent that I did.

Religious student organizations have a vital role in university life. Not only do they support those students who are part of a particular religion, they increase the cross-section of ideas present on campus. Without the presence and articulate expression of these ideas on campus, the quality and success of a university education diminishes. The story of the Veritas Forum at Boise State University illustrates this well.

In 2007, I and a group of students began the process of organizing The Veritas Forum at Boise State University. Our goal was to create university events that explored life's hardest questions; questions like what is morality, and why is there suffering and pain in our lives and in the world. We wanted our own professors and other leading minds around the world to come to Boise State to discuss these issues with us, the students, without the constraints of the classroom, and to engage in these issues in a way that was relevant to us in our everyday lives. In this way, the ideas and purpose of The Veritas Forum fit perfectly with the purposes of the university and organized student groups.

However, The Veritas Forum was also a religious student organization and we believed that Jesus, who he was and what he did, was important to any discussion and understanding of these questions. And in spite of Jesus' undeniable prominence and significance in the history of the world, He was conspicuously lacking from most campus dialogue on these issues. Given our stated goal and belief, it was necessary that to be successful and preserve the integrity of our organization we needed to establish qualifications for leadership that were consistent both with that goal and our religious beliefs. These two elements were inextricably linked.

We submitted our application for recognition as a student group in the Fall of 2007. It was rejected because of the qualifications we required to hold office. In spite of the setback, we continued to organize an event under another recognized student organization, The Cornerstone. Our first event discussed suffering and pain: its meaning, why does it exist, and is there an answer to it. Professor Scott Yenor of Boise State University, whose own daughter had recently undergone treatment for cancer, was the presenter. We advertised the event on campus and scheduled it for a Friday night during the spring semester of 2008. Given the day and time of year, our expectations were that maybe 40 people would attend. Instead of 40 people, about 240 students and faculty attended. The 200 person capacity room was filled well past its limitations. The event was a huge success, and was well received by numerous campus organizations and departments, many of them regardless of their own opinions and beliefs.

But the university continued to pursue its policy of not allowing student religious organizations to identify qualifications for leadership, and Cornerstone was derecognized as a club for the same reasons The Veritas Forum was denied recognition.

Again, in spite of this additional setback, we began work on hosting another event because the desire and interest in what we were doing was so clearly demonstrated by the success of the first event. In order to hold the event, we worked with another student religious organization that had yet to be derecognized. The second event was held in the spring of 2009 and was attended by more than 100 students and faculty. The topic discussed this time was the trend of removing "faith" and "religion" from public dialogue and discourse.

I and some other key students in the Veritas forum graduated in the spring of 2009. We were very proud of the work that had been accomplished and we were excited about the interest that was shown by the campus community in what we were doing. We were also disappointed that we had been unable to organize The Veritas Forum in such a way that it would have enabled it to continue past our graduation. The interest and the need for open and honest dialogue were clearly demonstrated, but the legal and institutional obstacles we faced prevented us from ever having The Veritas Forum formally recognized. There is no Veritas Forum at Boise State today.

Religious student organizations like the Veritas Forum benefit the university, but their inability to maintain officer qualifications will mean that they can no longer fully participate in the university community. Not only will individual students suffer, but the quality of our state universities will suffer as well.

Emily Jones

June 10, 2015

The Honorable Trent Franks, Chair
 Subcommittee on the Constitution and Civil Justice
 The Judiciary Committee of the United States
 House of Representatives
 2141 Rayburn House Office Building
 Washington, DC 20515

Dear Chairman Franks:

I am writing to you out of concern for the protection of religious freedom on public college and university campuses. I attended the University of Montana ("UM") School of Law from 2005 through 2008. During my law school tenure, I and several other students attempted to form a local chapter of the Christian Legal Society ("CLS"), a national organization of Christian lawyers, judges, law students and others that seeks to "proclaim, love and serve Jesus Christ through all we do and say in the practice of law, advocating biblical conflict resolution, legal assistance for the poor and needy, religious freedom and the sanctity of human life." The aspiration of the local UM chapter of CLS is to "maintain a vibrant Christian Law fellowship on The University of Montana campus which enables its members, individually and as a group, to fulfill the Christian mandate to love God and to love their neighbors as themselves." During my time at the law school, our group was denied status as a recognized student group at UM by the student body and by its governing Board.

In 2007 CLS-UM sought recognition and an allocation of student activity fees from the Student Bar Association ("SBA") Executive Board. The Board determines whether a student organization at UM School of Law is eligible for recognition and student activity fee funding and then allocates student activity fees to these recognized student groups. This budget is then submitted to the general student body for a vote. No guidance is given to the students in determining which student groups may receive funding, and no instruction is given regarding maintaining a viewpoint-neutral vote. Thus, the student body can decide to fund or de-fund groups based on those they like or agree with, and those they do not.

In order to ensure that it maintains its distinctive Christian voice – a right conferred on its members by the Constitution's canons regarding freedom of association and freedom of religious expression – CLS-UM limits those who control that voice, the voting members and officers, to those who affirm its Christian views and endeavor to live a life of integrity conforming to those beliefs. CLS-UM invites anyone, however, to attend and participate in its meetings and events. With full knowledge of CLS-UM's voting membership and leadership policies, the SBA Board voted to recognize CLS-UM and allocate student activity funds to it in the SBA budget. However, when the Board submitted these allocations to the student body for a vote, they were narrowly rejected amid opposition to CLS-UM.

Following the rejection of the proposed budget, which included funding for CLS-UM, the SBA Board revoked CLS-UM's recognition. The Board then re-submitted the budget to the student body with the funding allocation for CLS-UM excluded. The student body approved this budget. No other student group included in the first budget was excluded from the second budget. As a result, CLS-UM was substantially hindered in its ability to carry out its activities and advocate for its views during the 2007-2008 academic year.

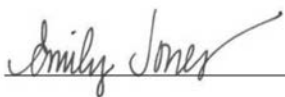
Eventually, the CLS-UM students decided they would, reluctantly and unfortunately, have to go to court to protect their First Amendment rights. They primarily challenged the SBA's method of allocating student activity fees as viewpoint discriminatory and, therefore, a violation of students' freedom of speech. They also challenged the denial of recognition to CLS-UM because of its leadership and voting membership requirements. After the district court ruled against them, they appealed to the Ninth Circuit. *CLS v. Eck*, 625 F. Supp.2d

1026 (D. Mont. 2009), *appeal voluntarily dismissed*, No. 09-35581 (9th Cir. Aug. 10, 2011). The appeal was stayed pending the Supreme Court's decision in *CLS v. Martinez*.

Eventually, UM and CLS reached a settlement agreement by which officials of the UM School of Law agreed to impose new rules upon the SBA student activity fee funding system in order to ensure that student fees were allocated among student groups in a viewpoint-neutral manner. In total, officials at the UM School of Law agreed to approximately 23 new rules for the allocation of student activity fee funding. Law school officials also agreed to recognize CLS as an independent student organization with the same access to law school facilities and channels of communication as enjoyed by other recognized student groups. In return, CLS acknowledged that it was ineligible for SBA funding under the SBA's current interpretation of its bylaws, but law school officials agreed that CLS was eligible to apply for funding through the community grants program administered by the law school.

Please take immediate action to ensure that others do not experience the same disparate treatment that the members of CLS-UM experienced. Religious liberty is the foundation for freedom in America, and sets us apart from much of the rest of world. Please protect our longstanding heritage and constitutional rights of college and university students to express their religious beliefs, to associate with others who share those beliefs, and to receive the same treatment as other student groups receive. Thank you very much for your consideration.

Sincerely,



CHARLES MICHELSEN
1560 Pelham Parkway South, 4B
Bronx, NY 10461-1140
(917) 667-1122
charliemichels@yahoo.com

March 8, 2015
House Committee on Ways and Means
Honorable Kevin Brady, Chairman

**Re : The Committee's March 2, 2016 Public Hearing re Systematic, Agenda-driven,
Suppression of Free Speech on America's Private & Public College Campuses**

Dear Committee,

Thank you for holding a long overdue hearing on this very important matter on March 2nd of this year. During that hearing Chairman Brady requested additional input from the public in the form of letters that could be added to the official Congressional Record. Here you are, Sir ...

On April 10th of 2015 I was wrongfully "academically dismissed" from the Hunter College School of Education (Hunter). I began the spring 2015 semester at Hunter having already completed 80% of my MA in Teaching English to Adolescents program, and despite some unfair grading, this teacher trainee was holding a very respectable 3.61 GPA. Indeed, my April 9 letter of dismissal from Hunter dean Matt Caballero cites "repeated misconduct," not poor academics as the reason for my immediate dismissal. It should be observed that dean Caballero's vague charges of misconduct were made more than two months AFTER I had filed very specific charges of professional misconduct against three Hunter faculty members, charges that were blithely ignored by all responsible Hunter authorities.

As my April 16 email to Hunter School of Ed boss dean David Steiner observed, CUNY, i.e., Hunter, has specific, legally-binding procedures for handling charges of misconduct against its students, procedures that dean Steiner's grad school had no right to ignore, or improve on. But my deans at Hunter were desperate to find a way--any way--to give themselves immediate and permanent relief from an unwanted conservative critic. To accomplish that goal, they made a strategic decision to do an "end-run" around CUNY's legally-binding but cumbersome and time-consuming disciplinary procedures. The deans at the Hunter School of Ed were also well aware that they could not rely on CUNY disciplinary procedures to get rid of me; the "repeated misconduct" dean Caballero alleged always involved Constitutionally-protected speech. That is why these cynics chose the expedient of an immediate "academic dismissal." But as you may remember, academic dismissal always follows academic probation, and I had never been put on academic probation, or in any way previously warned about my poor academic performance. It seems extremely unlikely that anyone in the 168 year-long history of the City University of

New York who was holding a 3.61 GPA has ever been "academically dismissed" before me!

In short, mine is about as blatant a case of viewpoint discrimination/intimidation as you are likely to see. If you or your committee has any interest in discouraging these sorts of outrages, you or your committee will find a way to come to the aid of college students like myself.

On its face, my case would appear to be a "slam-dunk." The facts indicate strongly that in a determined effort to be forever rid of an extremely annoying, conservative student critic, the Hunter College School of Ed took several actions it had no legal right to take. The entire business stinks to high heaven; a friend of mine has compared what happened to me at Hunter College with what happened to Putin critic Boris Nemtsov on a Moscow bridge some months previous. But the administration and lead counsel at Hunter is gambling that virtually ALL members of her profession are motivated solely by money, and that students without financial resources possess only theoretical legal rights. We shall soon see if Hunter's was a good gamble.

(For additional information re the ongoing case of Charles Michelsen v. Hunter College School of Ed, the City University of New York [NYS Supreme Court Index # 101450-2015], please go here: <http://iapps.courts.state.ny.us/iscroll/>)





March 16, 2016

The Honorable Peter Roskam
 Chairman, Subcommittee on Oversight
 The Honorable John Lewis
 Ranking Member, Subcommittee on Oversight
 House Committee on Ways and Means
 1102 Longworth HOB
 Washington D.C. 20515
waysandmeans.submissions@mail.house.gov

Re: Written submission for the record for the Oversight Subcommittee's Hearing on "Protecting the Free Exchange of Ideas on College Campuses" on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for holding a hearing to discuss the important topic of protecting the free exchange of ideas on college campuses. As an associate legal counsel for Cru, I write today to offer Cru's perspective as an organization with many religious student chapters all over the country, a number of which are facing challenges to preserving their religious speech. Many of these challenges arise due to university policies that prevent Cru student chapters from selecting leaders based upon religious qualifications. As the Supreme Court noted in *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 132 S. Ct. 694, 706 (2012), a religious group has a "right to shape its own faith and mission through its appointments" to leadership. The Court indicated that this principle invokes the Free Exercise clause, as identifying those who will teach the faith is a central tenet of religious practice. A group's leaders are those who must authentically communicate and preserve its religious messages. Cru has faced such challenges on numerous campuses, and a growing number of campuses continue to adopt such problematic policies.

Cru (previously named Campus Crusade for Christ) has had student chapters on college campuses since the 1950s, and has long respected and enjoyed the campus environment precisely because it is a place where students can have robust discussion and are able to hear and dialogue about diverse opinions and perspectives on life and learning. The free exchange of ideas on such campuses must include topics such as religion, a crucial element for many (both individually and corporately) in their identity formation and motivation to serve society. Cru wants to relate in a positive manner with universities. It has always desired to serve the campus communities where its chapters exist in order to meet students' spiritual needs and to help campuses and their student

bodies flourish. Cru embraces principles of nondiscrimination for membership, and has always welcomed any student to participate in the chapters and to explore Christianity.

- I. Cru desires to engage in expressive activity as student organizations on college campuses.**
 - a. In order for a group of students to engage effectively in expressive activity on a college campus, it must become an officially recognized organization.**

The benefits a university grants to recognized student organizations are many and varied, ranging from room reservations to advertising to funding requests. Some of the benefits that directly involve aspects of expression by the groups include tabling, handing out fliers, advertising and promoting activities and events, having access to websites that students at that campus regularly access, and being able to apply for funding that enables the group to hold events that engage the broader campus community.

If a group remains unregistered, it loses all of these privileges, and becomes essentially a second class group. The lack of ability to obtain classroom space for meetings and the inability to access students to let them know about the group's activities severely damages the ability of the group to function. Many students have told us that they consider unregistered clubs as lacking in legitimacy and they are accordingly less willing to consider participating in such clubs. Such isolation and lack of credibility will inevitably result in a group shrinking and losing its voice in the campus community. Although some campuses claim that groups can continue to function without being fully recognized, it remains a significant hindrance and a monumental disadvantage to be denied access to such status merely because a group wishes to preserve its mission and messages.

b. Student Leadership is crucial to preserve speech and expression

Group identity and expression are very closely tied up with the First Amendment concepts of free speech and free association.

It is reasonable for student organizations to seek leaders who are qualified to lead their particular group. The beliefs and passions of a group are what define the group and characterize its unique voice in a community. Religion is about much more than a set of statements; it is something that is communicated and expressed in word and deed. It is not intellectual knowledge. That is why a leader who can authentically and effectively pursue a religious mission and speak on behalf of a religious community must believe in its mission and be motivated by authentic personal faith.

A group's ability to preserve its speech and maintain a consistent identity is dependent upon its leadership. In fact, most groups restrict their leadership to those who share a common vision; this principle is true whether or not a group specifically states it in its organizing documents. Religious groups tend to want to specifically articulate such expectations, however,

because religious beliefs are many and varied, and a particular religious community is defined and distinguished by the particulars of its doctrine and beliefs. Yet a religious group's goal is the same as that of any other group—it desires to preserve its speech, identity and credibility. Accordingly, when a campus prohibits religious groups from considering religious qualifications, just because they happen to be “religious” (a listed category in the nondiscrimination clause), instead of recognizing that the religious nature of a religious group requires religious consideration, that prohibition impacts and alters the speech of those groups.

All Cru chapters welcome any student to participate in and become a member of their chapters, but Cru expects its student leaders to meet a higher standard in order to ensure that its speech is not hypocritical. As groups formed for the religious purpose of building “movements of people who are transformed by Jesus Christ,” Cru needs leaders who will enable the groups to remain faithful representatives of the Christian faith, in both word and deed.

c. Religious groups should be given the same ability to preserve their missions and messages that other groups receive under nondiscrimination policies

Almost all student groups want leaders who embody a combination of knowledge, skill, values and beliefs that match up with those of the group or organization that they represent. Under a nondiscrimination clause, most groups can require that their leaders *believe* in the group's vision without violating the nondiscrimination clause. This is because requiring agreement with a group's mission does not involve any consideration of a status listed in the nondiscrimination clause. A person can hold almost any belief regardless of their status in the listed categories. The notable exception is religion, which is the one status that involves status *and* belief, inextricably tied together. A person is of a particular religious status *because* he holds certain beliefs.

For religious groups, therefore, the values and beliefs of the group that it wants its leaders to uphold are religious; a religious person will best embody them and is more qualified to articulate and express them to the campus community. A religious group, therefore, will have equal treatment *only if* it is allowed to consider the category of religion in its leadership selection. It does not create special treatment for religious groups to allow them to do so.

d. It is better for diversity and nondiscrimination to allow religious groups to be religious.

Nor does it compromise a university's goals of nondiscrimination and diversity to allow religious groups to be religious. In fact, it hinders that goal to disallow it, and may in fact result in religious discrimination on the part of the universities applying their nondiscrimination policies in such a manner.

To the contrary, allowing students and student organizations to engage in private student speech is a crucial part of maintaining a diverse campus. Diversity is best achieved when

students express diverse viewpoints with authenticity and conviction. Student organizations are a natural and appropriate place for students to organize around and express their common perspectives. Religious diversity in particular adds a great deal to a campus environment, building tolerance and respect for people different than oneself. Campuses should wish to foster it.

e. It does not result in entanglement to protect religious groups in this manner

No law requires universities to interpret their nondiscrimination policies in this manner. When they choose to do so, they end up isolating religious groups and making them into second class citizens.

Student groups and organizations may engage in expressive activity without it being considered as the speech of the university where they organize. On public universities, this is based upon the principle of limited open forums, where a university opens space for private speech. *See Widmar v. Vincent*, 454 U.S. 263 (1981); *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217 (2000). There is no Establishment Clause violation to allow a religious organization to remain and function as religious. In fact, it creates more entanglement when a university dictates how a religious group may or may not select its leaders than when it allows religious groups to function as religious and preserve their own doctrine. *See Hosanna-Tabor*, 132 S. Ct. 694.

In addition, these principles were not changed in *Christian Legal Society v. Martinez*, 130 S. Ct. 1991 (2010). In that case, the Supreme Court narrowly addressed a unique policy that they called an all comers policy, distinct from a regular nondiscrimination policy that details protected classes. *See id.* at 2995 (Stevens, J., concurring). The all comers policy was to apply “equally to all groups and views,” not just those involving protected classes. *See id.* at 2999 (Kennedy, J., concurring). In addition, the *Martinez* court did not require any such policy, but merely indicated that a true all comers policy was permissible. *See id.* at 2992.

Religious expression is particularly worthy of protection, as has been true since the founding of our country. Ensuring that people can authentically practice diverse religions is consistent with the U.S. Constitution, federal law and state laws across the country that recognize that religion is uniquely worthy of protection.

II. Cru continues to face challenges on specific campuses

In order to provide a concrete example of our pressing concern about the impact of nondiscrimination policies that are misapplied to prevent religious groups from selecting leaders based upon religious criteria, I will discuss a current issue that is still in process. Indiana University (IU) adjusted its nondiscrimination policy and sought to put language in that any interested student could “seek leadership positions...without regard to consideration of such characteristics as...” the listed nondiscrimination categories, including religion.

IU further clarified its intended meaning for such language when it issued an FAQ document in August of 2016 (see Attachment 1) that specifically stated “No” in answer to the question, “May SGSO’s require students seeking to serve in leadership positions to be members of a particular religion?” Many religious groups, including Cru, were alarmed by this response and began to express such concern to the administration. On September 20, through an email to religious group leaders, Cru became aware that IU had determined to suspend the implementation of the policy for a year, during which time the policy would be under review and IU would take comments on the policy. The link given was <http://policies.iu.edu/policies/categories/academic-faculty-students/academic-student-affairs/student-organizations.shtml> (See Attachment 2 for the first two pages of the proposed policy from that link).

For the remainder of the Fall of 2015, individual students and student organization leaders submitted comments expressing their concern about the impact the policy would have on religious groups. Many students described the positive impact a particular religious student group had had on their lives; many indicated that a student leader in their group had meaningfully impacted them precisely because he/she was more mature in his/her faith, emphasizing the importance of religious leadership qualifications for religious groups.

We are thankful that IU is going through the process of reevaluating the proposed language, but we remain concerned that such language remains in consideration for large university systems like IU. We appreciate the direct engagement that we have had with administrators, but we remain alarmed by the hesitation to ensure this simple protection for religious expression on the campus.

The policy at issue, if unchanged, will not merely hinder religious groups from advancing their beliefs, but will discriminate against religious groups. Religious groups will be forced to choose between preserving their religious missions and messages or being recognized student organizations. This would make religious students into second class citizens, separating their organizations out for different treatment simply because they select leaders who believe in their religious purposes as other groups select leaders who believe in their non-religious purposes. It is a significant burden to be unregistered and will lead to isolation for such groups.

The simple solution for such situations is for campuses to include an additional sentence to their nondiscrimination policies, such as “A religious student organization will not be denied recognition as a student organization because it requires its leaders to agree with its sincerely held religious beliefs and religious standards of conduct.” Unfortunately, instead of seeing that choice for what it is—a decision to move towards equality and diversity and to protect the expression of religious groups—many campuses persist in denying the inequality that these policies produce for religious groups.

The idea that some groups require language added to nondiscrimination policies in order to continue to function is not new; in fact, it is consistently done for fraternities and sororities. Universities regularly add a gender exception to nondiscrimination policies that allow fraternities and sororities to continue to select their members based upon gender.

This example of Indiana University's proposed policy is a symptom of a larger issue around the country. The misinterpretation of nondiscrimination policies in such a way that harms religious student organizations that are merely seeking to be religious, exemplified here, is unfortunately becoming more and more common. Ultimately, this dangerous perspective may lead to silencing religious viewpoints and hindering the free exchange of ideas in this country. It is therefore worthy of the attention of this subcommittee. Congress should take note and act to protect student religious expression from being marginalized and diluted.

Respectfully submitted,

/s/ Lori D. Kepner

Lori D. Kepner
Staff Attorney
Cru—General Counsel's Office

ATTACHMENT 1: this document was sent to religious workers at Indiana University on August 12, 2015.
Question #6 raises particular concerns for student organizations formed for religious purposes.

Frequently Asked Questions about SGSOs and Indiana University's Non-Discrimination Policy:

1. What are the benefits of registering with the University as a Self-Governed Student Organization (SGSO)?

The benefits of registering an organization as an SGSO include:

- being able to reserve space on campus and often for free;
- applying for a Student Organization Account;
- applying for funding;
- applying for office space in the IMU;
- using the "SGSO at IU" trademark;
- reserving a table for the Student Involvement Fair.

2. Can student groups who elect not to register as SGSOs still meet on campus?

Yes, but they will not receive the benefits of being an SGSO. Non-registered groups of students are welcome to assemble and associate in areas of the campus that are open to them as students of Indiana University. Furthermore, they are welcome to reserve campus space for their events under the same terms and conditions as other third-party groups.

3. What non-discrimination requirements does the University have in place for SGSOs?

The University requires all SGSOs to accept "all comers." SGSOs cannot reject students seeking to participate in, become members of, or serve as leaders of the organization because of their age, color, disability, ethnicity, gender, marital status, national origin, race, religion, sexual orientation, or veteran status. The University requires each SGSO to include the University's non-discrimination statement in its SGSO constitution.

4. May an SGSO establish eligibility requirements for membership or leadership positions that are not tied to an individual being a member of a protected class?

Yes. SGSOs may impose eligibility requirements for membership and service in leadership positions as long as the requirements are not based on a student belonging to any of the protected classes listed above. Examples of acceptable requirements include:

- requiring members to pay dues;
- requiring members to attend group meetings consistently;
- establishing that leadership positions within the group are open only to those members who have been in good standing with the group for a certain period of time;
- honor societies establishing a minimum GPA threshold.

5. Are single-sex fraternities and sororities allowed under the University's non-discrimination statement?

Yes. The University abides by Title IX of the Education Amendments Act of 1972, which recognizes that differentiated treatment based on sex for purposes of membership in a social fraternity or sorority is not unlawful. An organization in this category may remove "gender" from the non-discrimination statement in its SGSO constitution.

6. May SGSOs require students seeking to serve in leadership positions to be members of a particular religion?

No. As mentioned above, eligibility for leadership in the SGSO cannot be based on any categories that are included in the University's non-discrimination statement. The requirement is that all students be eligible to join the SGSO and seek leadership positions within it. However, the SGSO is not required to elect or appoint any particular leadership candidate and may establish a process for electing or appointing leaders that does not exclude candidates based on their membership in a protected class. For example, a chapter of a religious student alliance would not be permitted to forbid someone of a different religion, or someone non-religious, from running for a leadership position within the SGSO.

7. What are the consequences of an SGSO failing to comply with the University's non-discrimination statement?

If, after registering, an SGSO fails to comply with the statement by excluding a student due to his or her membership in one of the protected classes listed above, a complaint may be made under the IU Student Code of Rights, Responsibilities and Conduct and the campus judicial process for student organizations. If sanctions result from that process, they may include the SGSO losing SGSO status.

ATTACHMENT 2: This includes the first two pages of the proposed policy

University Policies

STU-01

NOTE: This policy will be in review for the 2015-16 academic year to enable wide discussion and feedback from all campuses. Please send questions or comment to: policies@iu.edu

PLEASE NOTE: This policy is currently under review.

Student Organizations

STU-01



About This Policy
Effective Date:
Last Updated:
08-20-2015
Responsible University Office:
Office of the Vice President & General Counsel Office of the Vice President & Chief Financial Officer
Responsible University Administrator:
Sr. Vice President & Chief Financial Officer Vice President & General Counsel
Policy Contact:
Campus Dean or Vice Chancellor for Student Affairs
Related Information
<ul style="list-style-type: none"> • Code of Student Rights, Responsibilities, and Conduct • • •
Related Forms
<ul style="list-style-type: none"> • DRAFT SGSO Agreement for IU Bloomington

Scope

Policy Statement

Reason For Policy

Procedure

Definitions

Sanctions

Additional Contacts

History

[Back to top](#)

Scope

Student organizations at Indiana University.

Policy Statement

Student organizations at Indiana University will be considered and/or administered in one of three ways:

1. Self-Governed Student Organization (SGSO)

Most student organizations at Indiana University will be considered Self-Governed Student Organizations (SGSOs). The SGSO is an independent entity or independent association of individual students. The University recognizes the important role played by the SGSO in engaging students, creating a diverse co-curricular environment, fostering the expression of students' ideas and interests, and adding to the unique identity of Indiana University. The relationship between the University and SGSOs is viewed as consistent with the University's philosophy of education and student self-governance. To this end, SGSO leaders and members shall assume the responsibility for the organization's activities and conduct. The University shall make available certain staff and resources in the campus student affairs office to answer questions regarding the relationship between the University and SGSOs and to provide education and services to support the effective functioning of SGSOs.

Self-Governed Student Organizations must:

- a. Have a minimum of five members who are enrolled students at the IU campus;
- b. Have officers who are enrolled students at the IU campus;
- c. Have an advisor who is either an employed IU faculty or staff member (undergraduate students may not qualify as an advisor);
- d. Have a constitution that includes the following required anti-discrimination statement as well as any other language required by the campus student life office:
(Name of SGSO) allows any interested student to participate in, become a member of, and seek leadership positions in the organization without regard to consideration of such characteristics as age, color, disability, ethnicity, sex, gender identity, marital status, national origin, race, religion, sexual orientation, or veteran status.
**Under 20 U.S.C. 1681(a)(6)(A), social fraternities and sororities are exempt from Title IX discrimination prohibitions on the basis of sex with respect to their membership practices. The law recognizes that differentiated treatment based on sex for purposes of membership in a social fraternity or sorority is not arbitrary or unlawful. Organizations in this category may remove "gender" from the non-discrimination statement in their constitution.*

Self-Governed Student Organizations are considered separate organizations and must register annually and agree to and operate under the terms of the Self-Governed Student Organization Agreement ("SGSO Agreement"). SGSOs may receive a range of benefits by participating in the SGSO process and operating under the SGSO agreement, including eligibility to apply for and receive student activity fee funding; priority use of university facilities and services; an association with the Indiana University name through approved IU student organization branding elements; a network ID and email address; and the option of accounting management assistance where available. In part, the SGSO Agreement provides that:

- a. The SGSO is an independent entity or independent association of individual students, operates independently and is not an agent, servant, or employee of IU, and neither has the authority to act for the other or commit the other to any activity, transaction, or agreement;
- b. IU does not supervise, direct, or control the SGSO's activities;
- c. IU controls its facilities and services, which may be provided to the SGSO under certain conditions;
- d. The SGSO will comply with the terms of the campus student organization handbook;
- e. The SGSO's activities, whether or not sponsored or officially approved by the SGSO, do not and will not violate local, state, or federal laws;
- f. The SGSO's objectives are educational, charitable, cultural, social, or recreational and not for personal or private financial gain of any member;
- g. The SGSO and its members are subject to the Indiana University Code of Student Rights, Responsibilities, and Conduct;

March 16, 2016

The Honorable Peter Roskam
Chairman, Subcommittee on Oversight
The Honorable John Lewis
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515
waysandmeans.submissions@mail.house.gov

Re: Written submission for the record for the Oversight Subcommittee's Hearing on "Protecting the Free Exchange of Ideas on College Campuses" on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for holding a hearing on this most important topic regarding the need to protect the free exchange of ideas on college campuses. The Navigators is an international, interdenominational Christian organization that has served as a registered student organization on various American campuses for over sixty years. Currently, the Navigators students have registered organizations on over two hundred campuses.

We appreciate the chance to share one recent story of a campus challenge to the free speech rights of a student involved in The Navigators. Her story was originally submitted to the House Subcommittee on the Constitution and Civil Justice on June 10, 2015.

Sincerely,

Doug Weber
The Navigators
2511 Buckelew Drive
Falls Church, VA 22046
607-351-4668

(June 10, 2015)

Dear Chairman Franks,

My name is Emily Abraham and I was a freshman this year at Minnesota State University, Mankato.

Until just two months ago, Mankato had a residential life policy that said, "During community standards discussions at floor and building meetings, each area votes to determine if religious solicitation is allowed." I still remember our first floor meeting when we had to vote about this. I was so mad and had a bunch of thoughts going through my mind. Something about this vote we had didn't seem right.

In January of this year, I wanted to invite some neighbors in my dorm to eat pizza and discuss theirs and my opinions about the Bible. My CA told me that to do so was a direct violation of the campus religious solicitation policy. I was then reminded of the vote we had taken at the beginning of the year prohibiting any "religious solicitation" on the floor. I thought this policy was dumb and I still didn't understand. What was so wrong with me wanting to share about Jesus on the floor? In the Bible we are told to make disciples... that's hard to do when we are prohibited to talk about religion on the floors. Though I couldn't talk about religion it was 100% okay to invite someone to a fraternity party, a concert, a non-religious movie, or most anything else. Just not to a religious event. It didn't make sense.

When some others and I asked a residential life administrator about the policy, we were told that the policy had been applied by the university for at least as long as he had been at the campus (which is well over ten years), and that, in his eyes, the policy didn't have any negative ramifications or opposition. The message to me was clear: the policy is not the problem; you are the problem.

This policy had made me angry throughout the whole year and I finally built up enough courage to meet with some of the faculty members. I refused to allow my free speech to be quieted, and after persisting with my questions through a number of discussions, Minnesota State University, Mankato wisely agreed to repeal their policy. Many others and I trust that they will remove this policy from next year's handbook as they have promised.

But who knows how many other campuses implement this type of speech policing, and how many students have opted, and continue to opt, for quiet obedience rather than standing up to intimidation and even ridicule from various administrators?

Thank you,

Emily Abraham
2765 Laurel Street South Cambridge MN 55008
[763-377-0658](tel:763-377-0658)



Justin P. Gunter

660 Ralph McGill Blvd. NE, Apt. 2509, Atlanta, GA 30312

March 16, 2016

The Honorable Peter Roskam
Chairman, Subcommittee on Oversight
The Honorable John Lewis
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515
waysandmeans.submissions@mail.house.gov

Re: Written submission for the record for the Oversight Subcommittee's Hearing on
"Protecting the Free Exchange of Ideas on College Campuses" on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis,

Thank you for the opportunity to provide this letter for the record in the Subcommittee's hearing "Protecting the Free Exchange of Ideas on College Campuses." Thank you also for your, and the Subcommittee's, attention to the threats to the First Amendment taking place on college and university campuses across our nation.

As a brief introduction, from 2011–2012 I served as President of the Vanderbilt Student Chapter of the Christian Legal Society while studying at the Vanderbilt University Law School. This letter briefly summarizes my experiences during this time. The Christian Legal Society is a national organization that facilitates student chapters at law schools across our nation. Our particular chapter at Vanderbilt focused primarily on promoting student spiritual well-being and encouraging the discussion of diverse viewpoints. For many students, law school is an intense and stressful experience. In this environment, our Christian Legal Society Chapter promoted students' spiritual well-being by providing group prayer meetings, Bible studies, and a safe-place for students to discuss the difficulties of law school with their peers. Additionally, the law school education is designed not only to teach students legal principles, but also to expose them to a diverse group of people and ideas—exposure which serves future lawyers well when they must represent diverse clients or create policies that take into account the needs of diverse communities. At Vanderbilt, this task was filled in large part by student groups, whether they be groups dedicated to environmental concerns, business policy, animal rights, or political views (both Republican and Democrat). In this eclectic mix, our Christian Legal Society Chapter sought to encourage discussion of Christian viewpoints. To do so, we regularly invited speakers to come to Vanderbilt and speak on topics of special importance to Christians in our nation.

For years our chapter of the Christian Legal Society was recognized as a student group at Vanderbilt—all the while supporting student’s spiritual needs and promoting discussions of diverse viewpoints on campus. However, in summer 2012, the leadership of our chapter was informed that we would not be allowed to continue in the following school year. After engaging Vanderbilt administrators to ascertain the rationale for this sudden change, we were told that Vanderbilt had denied recognition to our Christian Legal Society chapter because our group expected its leaders to lead Bible studies, prayer, and worship along with affirming the group’s core religious beliefs.¹ Another group was told that its recognition was denied because of five words in its leadership requirements: “personal commitment to Jesus Christ.”² In short, Vanderbilt’s policy stated that a Christian group could not ask that a leader believe in Christianity—even if the group (like the Christian Legal Society) welcomed all students to be members and attend its events regardless of their religious beliefs. The leadership of our Christian Legal Society Chapter, and many other religious groups on campus, tried to reason and work with the Vanderbilt administrators. However, ultimately our chapter, along with thirteen other religious groups, were forced to leave campus for refusing to recant our religious beliefs.

For many college students, the activities and time they spend on their college or university campus constitutes the vast majority of their college experience. A student group that is removed from campus loses many abilities to support and engage students. At Vanderbilt specifically, our removal meant that we could no longer promote our events on campus except by word of mouth, were not allowed to participate in Vanderbilt events (such as student organizational fairs), were deprived of funding to sponsor speakers, and were allowed space to meet at Vanderbilt only at the lowest priority. Similarly situated groups at public universities face even more severe sanctions—including being banned altogether.

The idea that a group could be banned at colleges and universities in the United States of America for nothing more than seeking to express a specific viewpoint is contrary to both the text and the principles enshrined in the First Amendment to our Constitution. Policies, like those implemented by Vanderbilt, contradict the American ideal of a pluralistic society—where individuals and associations may express their opinions and beliefs freely without being censored by a university administrator or government executive. As the drafters of the First Amendment recognized, this basic freedom is essential to a free society. I thank the subcommittee for its attention to this important issue and once again thank the subcommittee for allowing me to submit this letter.

Respectfully Submitted,

/s/ Justin P. Gunter, Esq.

Enclosure

¹ See Attachment A at 1 (enclosed).

² See Attachment A at 2 (enclosed).

ATTACHMENT A

----- Forwarded message -----

From: [redacted]
Date: Tue, Aug 9, 2011 at 10:40 PM
Subject: RE: Christian Legal Society status
To: [redacted]
Cc: [redacted]

Dear [redacted],

Thank you for submitting your new Constitution for the Christian Legal Society. In reviewing it, there are some parts of it that are in violation of Vanderbilt University's policies regarding student organizations; they will need to be addressed before the Office of Religious Life can endorse CLS's approval.

Article III states that, "All officers of this Chapter must subscribe to the Christian Legal Society Statement of Faith." Vanderbilt's policies do not allow any student organization to preclude someone from a leadership position based on religious belief. Only performance-based criteria may be used. This section will need to be rewritten reflecting this policy.

The last paragraph of Section 5.2 states that "Each officer is expected to lead Bible studies, prayer and worship at Chapter meetings as tasked by the President." This would seem to indicate that officers are expected to hold certain beliefs. Again, Vanderbilt policies do not allow this expectation/qualification for officers.

Section 9.1 regarding Amendments to the Constitution should include language stating that any amendment must also be in keeping with Vanderbilt University's policies on student organizations and must be approved by the University before taking effect.

Please make these few changes and submit a copy of the amended Constitution to me so we can proceed with the approval process.

Also, we do not have in hand a copy of the revised Officer and Advisor Affirmation Form, as requested in the initial deferral. Specifically, we need a clean document without the handwritten text that seems to be an exclusionary clause advocating for partial exemption from the University's non-discrimination policy. Please forward us a copy of this as well.

Thank you. Please let me know of any questions you may have.

Best,

[redacted]

[redacted]

----- Forwarded message -----

From: vanderbiltcollegiatelink
 <noreply@collegiatelink.net<mailto:noreply@collegiatelink.net><mailto:noreply@collegiatelink.net<mailto:noreply@collegiatelink.net>>>
 Date: Tue, Apr 17, 2012 at 11:53 AM
 Subject: Registration Status Update: [redacted name of Christian student group]
 To: [redacted name of student]

The registration application that you submitted on behalf of [redacted name of Christian student group] <[https://vanderbilt.collegiatelink.net/organization/\[redacted\]](https://vanderbilt.collegiatelink.net/organization/[redacted])> has not been approved and may require further action on your part. Please see the reviewer's comments below or access your submission now<[https://vanderbilt.collegiatelink.net/organization/\[redacted\]/register/Review/650475](https://vanderbilt.collegiatelink.net/organization/[redacted]/register/Review/650475)>.

Thank you for submitting your registration application. Vanderbilt appreciates the value of its student organizations. Your submission was incomplete or requires changes, thus we are not able to approve your application at this time. Please re-submit your application including the following items or changes: - Please change the following statement in your constitution:

"Article IV. OFFICERS

Officers will be Vanderbilt students selected from among active participants in [redacted name of Christian student group]. Criteria for officer selection will include level and quality of past involvement, personal commitment to Jesus Christ, commitment to the organization, and demonstrated leadership ability."

CHANGE TO:

Officers will be Vanderbilt students selected from among active participants in [redacted name of Christian student group]. Criteria for officer selection will include level and quality of past involvement, commitment to the organization, and demonstrated leadership ability.

We are committed to a timely review of every complete application received and to letting you know the status of your application as soon as possible.



March 15, 2016

The Honorable Peter Roskam
Chairman, Subcommittee on Oversight
The Honorable John Lewis
Ranking Member, Subcommittee on Oversight
House Committee on Ways and Means
1102 Longworth HOB
Washington D.C. 20515
waysandmeans.submissions@mail.house.gov

Re: Written submission for the record for the Oversight Subcommittee's Hearing on
"Protecting the Free Exchange of Ideas on College Campuses" on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis:

I write to you as the former President of the Christian Legal Society (CLS), The Ohio State University (OSU) Moritz College of Law student chapter. Founded in 1961 CLS is a non-profit organization that exists to educate, train, and equip Christian legal professionals and law students to practice Christian principles in the legal profession. Student chapters are part of CLS' Law Student Ministries. I was privileged to serve as the chapter President during the 2003-2004 academic year, which was my second year of law school. We were a chapter of modest size, with a membership of approximately ten law students, and one faculty sponsor. Membership in CLS requires affirmation of a Statement of Faith, and adherence to a code of conduct that follows a biblical approach to inter- and intrapersonal conduct. Membership in CLS confers several privileges, including the right to vote for the chapter's officers. In order to maintain good standing with CLS' national organization, student chapters must adopt a constitution, bylaws, and codes of conduct that are consistent with those of the national organization.

Of the literally hundreds of student organizations available at a large, public university such as Ohio State, I chose to devote my time and energy to serving with CLS. CLS' stated mission is to "inspire, encourage, and equip Christian lawyers and law students both individually and in community to proclaim, love and serve Jesus Christ through the study and practice of law, the provision of legal assistance to the poor and needy, and the defense of the inalienable rights to life and religious freedom." Upon learning of CLS, I instantly knew I had found an organization with whom I would find purpose and meaning during my law school tenure. Little did I know that groups who sought to impose their notions of "liberty" upon us would challenge CLS' continued existence.

In the fall of 2003—only weeks into my tenure as chapter President—some fellow students asked me whether non-CLS members could attend CLS chapter meetings approached me. I responded that non-members were not only permitted, but were welcomed and encouraged to attend our meetings. Several days later, those same students asked whether non-members could become voting members or officers. I responded that I would need to review the chapter constitution and bylaws. After review and consultation with other chapter officers, we determined that only those who are able to affirm CLS' Statement of Faith, and adhere to our bylaws and code of conduct, were eligible for voting membership and officership.

As a result of our candid response, the students filed a formal complaint with the law school administration. The Law School Dean requested a meeting with me, whereupon she explained the nature of the complaint and asked for my response. I explained that, as a student chapter, we had no choice but to maintain consistency with CLS' national organization, or we would no longer be permitted to affiliate ourselves with them. In essence, to change our constitution and bylaws would be to change the very nature of our organization. We would cease to be a Christian Legal Society.

Several days later, The Ohio State University initiated an investigation into our chapter for allegedly violating the University's non-discrimination policy. The University threatened to void our status as a recognized group, thereby rescinding our ability to use University facilities, receive funding from our student fees, and possibly requiring repayment of past funds received. The consequences of such action would have been devastating. Without the ability to meet on campus, to receive financial assistance, or to even exist as a recognized organization, I am certain CLS would have ceased to continue its ministry at The Ohio State University. Those of us for whom CLS provided a meaningful and important vehicle through which we could use our legal education for the greater good would be relegated to second-class citizens simply because of our sincerely held beliefs.

I agreed to undergo mediation with a leader from the complaining organization, in the hopes that we could achieve reconciliation. I also hoped to demonstrate that our organization was open and welcoming to all, but that we simply could not compromise our core principles and beliefs. At the next chapter meeting—we met weekly—I apprised the attendees of the situation, and asked that we all make every effort to maintain a friendly and welcoming environment. I recall specifically inviting the very students who complained to CLS meetings, so they could observe for themselves our desire for friendship and collegiality. Unfortunately, our attempts were to no avail.

Once informed of the University's decision to investigate us, I convened an emergency session with our chapter's members and officers. We decided that the appropriate action was to contact the CLS national organization to inform them of the situation. I soon learned that CLS sued The Ohio State University in federal court for religious discrimination. After doing so, my involvement and role diminished significantly, so that I could maintain my focus on my legal studies. I provided some assistance with the preparation of legal documents on our student chapter's behalf, but my involvement primarily consisted of signing documents and providing statements. It also helped to receive affirmation and encouragement that we had not violated the law, and that we did the right thing.

Several acrimonious months later, we were informed that the University reached a settlement with CLS, and agreed to amend its non-discrimination policy with an exception for student organizations that hold "sincerely held beliefs." My understanding is that the exception was a stop-gap measure, and I do not know if the University continues to provide such an exception today. My hope is that it does; there are many faith-based organizations with sincerely held religious beliefs who would be unfairly and unlawfully penalized were the University to rescind this hard-won exception.

To summarize, from October 2003 through November 2004, the CLS student chapter at The Ohio State University Moritz College of Law was threatened with exclusion because

of its religious leadership requirements. After months of discussions with University administrators, a lawsuit was filed, which was dismissed after the University revised its policy “to allow student organizations formed to foster or affirm sincerely held religious beliefs to adopt a nondiscrimination statement consistent with those beliefs in lieu of adopting the University’s nondiscrimination policy.” CLS then met without problems from 2005-2010.

In September 2010, the university asked the student government whether the university should change its policy to no longer allow religious groups to have religious leadership and membership requirements. On November 10, 2010, the OSU Council of Graduate Students unanimously adopted a resolution urging the University to drop its protection of religious student groups. The OSU Undergraduate Student Government passed a similar resolution. On January 18, 2011, the OSU Council on Student Affairs voted to remove the protection for religious student groups and “endorse[d] the position that every student, regardless of religious belief, should have the opportunity . . . to apply or run for a leadership position within those organizations.”¹ But in June 2012, the Ohio Legislature passed a law prohibiting public universities from denying recognition to religious student organizations.²

Unfortunately, despite these new protections afforded by the law, there will inevitably be human consequences as a result of religious hostility and discrimination. I was often the subject of name-calling, gossip, and rumor-mongering. The Law School “advised” that I undergo mediation with those whom I had “offended.” In short, the law school—*my* law school—created a hostile environment for me. I was warned by upperclassmen not to take courses by certain professors who were not likely to give me fair evaluations. Some of my classmates verbally admonished me for my sincerely held religious beliefs. And I was only in my second year of law school. I would have to endure this treatment and hostility for more than another year.

Mr. Chairman, thank you for the opportunity to share my experience. I am happy to provide additional details if necessary.

Sincerely,



Michael Berry

¹ The student government resolutions are attached.

² Ohio Rev. Code § 3345.023.

**The Ohio State University
Council of Graduate Students**

Resolution 1011-AU-006

**Supporting the Repeal of the
Registered Student Organization Exemption**

Author: Jonathan Nutt(19), President
Sponsor: The Executive Committee
Introduced: November 12, 2010

WHEREAS, new legal precedence set by the U.S. Supreme Court case *Christian Legal Society Chapter of the University of California, Hastings College of Law v. Mañinez Et al.* brings reason to review the current Registered Student Organization exemption that enables "a student organization formed to foster or affirm the sincerely held religious beliefs of its members may adopt a nondiscrimination statement that is consistent with those beliefs;" and

WHEREAS, the President of the United States of America recently committed to a nationwide effort ending discrimination in all its forms in schools and communities; and

WHEREAS, the University has fostered a culture of inclusion for over 40-years and the exemption is in direct conflict with the vision and goals of the University set forth in the Academic Plan, Diversity Action Plan and motto *disciplina in civitatem* (education for citizenship); and

WHEREAS, the exemption is counterintuitive to the Philosophies and Guiding Principles outlined in the Registration Guidelines for Student Organizations at Ohio State and without intelligible principle and therefore difficult to interpret, enforce, and adjudicate; and

WHEREAS, the Council of Graduate Students has previously taken positions affirming mutual respect and fair treatment of all individuals at The Ohio State University to support an environment of diversity that enriches the community and enhances the educational process; and

THEREFORE LET IT BE RESOLVED, that the Council of Graduate Students urges The Ohio State University to repeal the exemption outlined in the Registration Guidelines for Student Organizations at Ohio State that states "A student organization formed to foster or affirm the sincerely held religious beliefs of its members may adopt a nondiscrimination statement that is consistent with those beliefs;" and

LET IT BE FURTHER RESOLVED, that the Council of Graduate Students charges its Graduate Student Representatives in University committees to vote in accordance with this resolutions; and

LET IT BE FURTHER RESOLVED, that the Council of Graduate Students charges its President to communicate to the Ohio State University President, the Executive Vice President and Provost, the Vice Provost and Chief Diversity Officer, the Vice President of Student Life, the Dean of the Graduate School, the Undergraduate Student Government, the Inter-Professional Council and all other appropriate groups the Council's position as established by this resolution.

Date Approved: November 12, 2010 (Unanimously)

A handwritten signature in black ink, appearing to be "Val Smith", written over a horizontal line.

President | Council of Graduate Students

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

January 18th, 2011

Submitted by Bryan Ashton
On behalf of The Council on Student Affairs

CHARGE:

Recommend a course of action in regards to the religious student organization carve-out to the non discrimination clause in the Student Organization Registration guidelines at The Ohio State University.

RESEARCH:

The Council began the process of reviewing the carve-out in the beginning of November through an Ad-Hoc committee. This committee finished their work at the end of November and produced a recommendation in favor of a blanket removal of the carve-out (attached). On November 30th, CSA hosted an open forum, in which we heard opinions from student organization leaders and university community members about the issue. During the quarter both Undergraduate Student Government and the Council of Graduate Students passed resolutions in favor of the removal of the Carve Out (attached). Voting CSA members were also provided with numerous reading materials and encouraged to engage in constituency outreach.

FINDINGS:

The Council voted (12-1) in favor of accepting the Ad-Hoc committee's recommendation of a blanket removal of the carve-out. The Council recommends that this change be placed into effect for the next student organization registration year and that appropriate University resources be allocated to help organizations transition and maintain their compliance and registration status.

The Council, in accepting this recommendation, endorses the position that every student, regardless of religious belief, should have the opportunity to participate in student organizations as well as have the opportunity to apply or run for a leadership position within those organizations. The Council believes that the Office of Student Life in conjunction with the Office of Legal Affairs should address acceptable officer selection procedures with groups who request such assistance.

Attached to this recommendation is the report of the Ad-Hoc committee as well as the Student Government resolutions that were introduced. Much debate and strong feelings were drawn from these resolutions and reports, so they are included in the recommendation.

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

Submitted by Bryan Ashton
On behalf of Student Organization Carve Out Ad-Hoc

November 29, 2010

CHARGE: Recommendation a course of action in regards to the religious student organization carve-out to the non discrimination clause in the Student Organization Registration guidelines.

MAKE UP: The Ad-Hoc Committee consisted of representatives from Residence Life, the Law School, IPC, USG, CGS, Muslim Student Association, Staff, and Faculty. Ex-Officio members included representatives from Legal Affairs and Student Activities.

RESEARCH:

The group heard from Michael Layish of Legal Affairs, as well as Kerry Hodak from Student Activities in regards to their experiences with the carve-out and the history of its implementation. The group also discussed the implications of the removal of the carve-out or continuing with the carve-out in place for religious student organizations. Each student government was asked to do constituency outreach and in the process CGS passed a resolution regarding the issue. The committee then spent three meetings debating the merit of the removal of the carve-out, upholding the carve-out, and the examination of a leadership exemption.

FINDINGS:

The Ad-Hoc Committee voted unanimously (8-0) in favor of recommending that the carve-out, in relation to its application to general members, be removed. There was discussion and dissent to the idea of a blanket removal, with three members of the committee voting in favor of adopting a carve-out, similar to current carve-out, however applied only to leadership positions in the organization. The recommendation of the Ad-Hoc Committee was (5-3) in favor of a blanket removal of the current carve-out. Below are opinions in favor of a blanket carve-out (Brandon Edwards) and opinions in favor of a leadership position carve-out (Maria Ahmad).

OPINIONS:

Blanket Removal

Put simply, the debate placed before the Council on Student Affairs regarding carve out language for religious-based Student Organizations requires a choice of the lesser of two evils. By removing the carve-out for religious-based Student Organizations, Ohio State runs the risk of diminishing the voice of student organizations built upon a sincerely held religious belief. By denying these organizations the privileges associated with registration, we threaten discrimination against those groups that are organized around a certain interpretation of religious doctrine. However, by keeping the religious Student Organization exemption currently in place,

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

Ohio State's Office of Student Activities leaves open the option of groups discriminating against members of the student body interested in membership. Keeping the carve out institutionalizes the ability of Student Organization members to openly discriminate against students with opinions and behaviors different than their own. The question is: should we potentially discriminate against Student Organizations or should we allow those Student Organizations to discriminate against individual students. It is my opinion, and the unanimous opinion of the CSA Student Organization Guideline Review Ad-Hoc Committee, that the former is a preferred action in lieu of the potential ramifications of the latter. We must protect the rights of students to join the organizations of their choosing instead of tolerating the discriminatory tendencies of individual Student Organizations.

As a public University entrusted with the stewardship of taxpayers dollars, we must not allow Student Organizations to discriminate against federally mandated protected classes. Additionally, we must consider where the funding comes from for the benefits bestowed to Registered Student Organizations. Each student pays a \$25 Student Activity Fee, and this money allows Registered Student Organizations access to a number of benefits. It is irresponsible to require this fund of every student but not allow individual students the right to join any Student Organization of their choosing due to discriminatory rules put in place by those groups.

It is the opinion of some that carve out language still be included in governing the selection of Student Organization Officers. In response to that, I advocate that we allow democracy to run its course. It is entirely rational to impose voting membership requirements relating to attendance at meetings and fulfillment of other membership characteristics. By restricting membership to those dedicated to its mission through demonstrated participation, each Student Organization has the ability to create an electorate as devoted to the organization as possible. It is in that spirit that we should allow voting members to install the leadership of their choosing, free from institutionalized guidelines precluding certain members the privilege of seeking officer status. We must trust the capacity of each Student Organization member to vote for the candidate most in line with his or her values and goals for the organization. Democracy should decide that someone is unfit for officership rather than guidelines that allow precautionary discrimination.

Justice Anthony Kennedy summed up the spirit of the need for carveout removal in his concurring opinion on *CLS v. Martinez*: "a vibrant dialogue is not possible if students wall themselves off from opposing points of view."

--Brandon N. Edwards, November 28, 2010

Leadership Position Carve Out

Student Life is made up of students for students. Student groups are run by students. Any student is able to create a new group on campus with any mission or purpose that they desire. But once the group is started, it is crucial for the group to have some rights that will keep them stable and active. Religious student groups are created for two main purposes. The first purpose is to foster the beliefs and maintain the identity of those who follow that faith on campus. The second purpose is to let others on campus know about the faith through various means. Seeing the second purpose, it is obvious that groups that want to affiliate their self as an official OSU group, will plan events that would be open to all students and fulfilling their purpose, and using the student's activity fee.

Council on Student Affairs Recommendation
Religious Student Organization Carve-Out

However the first purpose cannot be fulfilled without having a leader who shares the basic beliefs and concepts of the religious thought that the group was founded upon. One cannot help instill faith in another unless the former also believes. To have a leader who does not believe in the basics of that faith become the face of the group, and that religion, is deceitful and unfair to those who join. This partiality can be more readily applied to religious groups over others such as ethnic ones because religion is something one can choose to follow, not something one is born with. We do not even have to look at the degrees of religiosity but to have someone who claims and seems to be believing in and following the group's mission is not only ideal but necessary.

It may be true that groups should use their own wisdom in choosing their leaders through having a criteria and elections. However, student groups come in all sizes and to do this may be difficult for smaller and new groups. These student groups should have some rights as to who can and cannot be the representative of their group. If a group sees it necessary to not let that individual become the leader, the latter has the ability to start his or her own group which is simple to do at this University. This will also foster more diversity and give scope to larger group of students who may not have wanted to be part of another group's mission. Having a carve out for leadership does not have to be used by those who do not want to, but it should be there for those groups who want it. If about 23 of 900 student groups are using the carve out presently, and need to, then they should be able to.

-Maria Ahmad



Testimony of Mitchell Steffen
Submitted for the record February 29, 2016

Members of the House Committee on Ways and Means Subcommittee on Oversight,

Thank you for offering me this opportunity to testify today on my recent experience with censorship of free speech on campus.

My name is Mitchell Steffen and I am a freshman student at Macomb Community College located in Clinton Township of Macomb County, Michigan.

On Tuesday, February 16, 2016, I was registering students for Young Americans for Liberty, a student group with an active campus membership, with a friend inside the student life building located on the center campus during school hours. We were carrying clipboards; we had no table and posted no materials on the walls. We approached students passing by and elicited them to join our organization, which discusses and advocates on freedom issues on college campuses (including, ironically, freedom of speech on campus.)

We canvassed the area for about 20 minutes when we were approached by a school official who did not identify herself but insisted we stop and refrain from recruiting students without first obtaining permission from the administration. I asked her what would happen if we refused to do so. She replied by saying that campus police would make us stop by whatever means necessary.

We complied to avoid escalating the situation, but once the official left, we struck up conversations with students about what had just happened.

Subsequently, we reserved a table to canvass at the student life center at the South campus, again to recruit members for our organization. We were approached by the same woman, who asked whether we were petitioning. We informed her we were not. She explained that for our information, we could not petition without obtaining prior approval from the administration. She departed and allowed us to continue recruiting at our table, but returned shortly thereafter and presented us with a printed copy of the college's policy on "expressive activity," with handwritten contact information for Geany Maiuni, Dean of Student and Community Services. The policy is located on the Web at: <http://www.macomb.edu/about-macomb/college-policies/administrative/policy-expressive-activity.html> and is attached.

She departed and we concluded the event without further incident.

I have serious concerns about both the policy on "expressive activity" and the incidents. I will discuss the policy first.

Nowhere is any lawful authority cited for the university to demand students obtain prior permission to engage in "expressive activity," to prohibit "expressive activity" inside

College buildings, or to exempt labor unions from these rules. Nowhere is any explanation provided for the *need* to demand students obtain prior permission to engage in “expressive activity”: no record of any pattern of problems created by “expressive activity” was offered. No explanation for prohibiting “expressive activity” in College buildings was given.

While it might be unnecessary to cite the legal reasons for rules relating to, for example, signage size limits near roads, it is, or certainly should be, necessary to justify rules that clearly inhibit free speech. It is unreasonable to limit students' right to “expressive speech” to outdoor areas, where rain, snow, and bitter cold can discourage participation and even pose safety hazards.

There is no remedy provided for a Dean's failure to grant permission promptly, or for any failure on the part of the Dean or the College.

Finally, and perhaps most importantly, *there is no justifiable reason why my community college should be permitted to define activities it can regulate as “expressive speech” using such broad terms as “assemblies” and “campaigning” which do not carry any inherent risk to public health and safety. The College is not, or certainly should not be, permitted to limit the First Amendment rights of its students.*

Now, as to the incidents.

In the first, the campus official – perhaps the Dean herself – ordered us to cease and desist, under threat of possible academic sanctions or even arrest, without making even basic inquiries to determine whether we were actually in violation of any policy.

I do not believe my friend and I violated any campus policy, and we were wrongfully stopped from freely engaging in lawful activity.

I do not believe it would have been, or should have been, lawful for the College to have stopped us if we had been petitioning, demonstrating, or “assembling” if we were not doing so disruptively.

In the second incident, the campus official was more reserved, since this time she did not stop us from approaching our fellow students under threat of police action, when we were doing nothing different from the first incident. But because we were doing nothing different, and we were approached and delivered a printed copy of the “expressive activity” policy, we interpreted the intent of the agent of the Dean as to send a clear message that we were being closely watched and advised to obey the unconstitutional policy.

I strongly believe both the policy and the manner it is enforced are highly inappropriate, and a symptom of a more systemic problem of a lack of concern for the First Amendment in college administrative policy.

The policy was undoubtedly reviewed by College attorneys who apparently saw no problem with the issues I raise here. The conduct of the official who wrongly threatened me and my friend suggests that there is no policy for administrators' conduct to ensure they are aware of students' rights.

I believe we need stronger protection for the First Amendment rights of students on college campuses. While these matters are often appropriately handled at the state level, the Fourteenth Amendment grants Congress the authority to protect the First Amendment rights of citizens at the state level.

Thank you for taking the time to contemplate this important constitutional issue. The right of students to engage in free speech and political assembly on college campuses improves the quality of political discourse, which benefits our society as students graduate to become leaders.

I appreciate your consideration of my story, my situation, and my interpretation of what these facts mean.

Respectfully submitted,

Mitchell Steffen





DIAL R-E-J-O-Y-C-E
323 735-6923

March 16, 2016

The Honorable Peter Roskam
Chairman, Subcommittee on Oversight
The Honorable John Lewis
House Committee on Ways and Means
1102 Longworth HOB
Washington, D.C. 20515
waysandmeans.submissions@mail.house.gov

Re: Written statement of ReJOYce In Jesus Campus Fellowship
submitted for the written record for the Oversight Subcommittee's Hearing on
"Protecting the Free Exchange of Ideas on College Campuses" on March 2, 2016

Dear Chairman Roskam and Ranking Member Lewis:

Thank you for holding the hearing on March 2, 2016, regarding the free exchange of ideas on college campuses. As ReJOYce In Jesus Campus Fellowship ("RJCF") knows too well from its own experiences, the free exchange of ideas, including religious ideas, is under attack on college campuses nationwide. College administrators too often deny access to religious student organizations in order to penalize the religious organizations for their religious beliefs and conduct. This letter will describe a recent problem that RJCF had at California State University, as well as a problem at Texas A&M University in the past. RJCF has been a recognized student organization on many college campuses across the country for several decades. RJCF is a Christian student group that primarily, but not exclusively, draws its membership from the African-American Christian community and that-- unremarkably until recent years-- requires its leaders to believe in Jesus Christ as their Lord and Savior.

California State University: California State University is the largest public university in the country with 437,000 students on 23 campuses. Cal State recognizes thousands of student organizations and allows them to meet for free and have access to various channels of communication with other students and the broader campus community.

For over 40 years, RJCF had been a recognized student organization at Cal State's Northridge campus ("CSUN"). But in December 2011, former Chancellor Reed adopted Executive Order 1068 that, among other things, re-interpreted the university's nondiscrimination policy to prohibit religious student groups from maintaining religious leadership requirements. The order also purported to adopt an "all-comers" policy that would prohibit all student groups, including religious groups, from choosing their leaders according to the groups' beliefs. The executive order is at <http://www.calstate.edu/eo/E0-1068.pdf>.

P.O. BOX 47775 LOS ANGELES CALIFORNIA 90047

Cal State's new policy employed an unfair double standard: fraternities and sororities were given an exemption to select their leaders and members on the basis of sex, but religious organizations were denied an exemption to select their leaders on the basis of their religious beliefs.

In 2013, Cal State began to implement its new policy, notifying several religious student organizations, including RJCF, that they would no longer be recognized as student organizations unless they stopped requiring their leaders to agree with their religious beliefs. In August, Cal State granted religious student groups a one-year moratorium for the 2013-2014 academic year. The fact that the religious groups were the only ones seeking a moratorium demonstrates that other student groups could easily adapt to the new policy, whereas the religious groups could not.

During the moratorium, religious student groups urged Cal State to adopt a simple solution. All Cal State needed to do to respect religious liberty was to add a single sentence to its policy: "The prohibition on leadership policies that discriminate on the basis of religion does not apply to religious student organizations." The religious groups provided Cal State with several examples of other major universities' nondiscrimination policies that respected religious liberty. In December 2014, members of Congress sent a letter to California State University, expressing their disapproval of the religious student groups' exclusion.

Despite the letters from the Members of Congress and the religious student organizations, Cal State refused to extend the moratorium and began enforcement against the religious groups during the 2014-15 academic year. Cal State withdrew recognition from many religious student associations, including RJCF, InterVarsity Christian Fellowship, Cru (formerly Campus Crusade for Christ), The Navigators, Chi Alpha, and Ratio Christi. Some of these groups had met for over forty years on California State University campuses with religious leadership requirements. But under the new policy, as one Cal State administrator explained to the media, "What they cannot be is faith based where someone has to have a profession of faith to be that leader."

In January 2015, RJCF's student president received notice that Cal State was terminating RJCF's recognition as a student group. Cal State's letter, which is attached, explained:

This correspondence is to inform you that effective immediately, your student organization, ReJOYce In Jesus Campus Fellowship, will no longer be recognized by California State University, Northridge.

... The ReJOYce In Jesus Campus Fellowship organization will no longer be recognized given failure to submit an organizational constitution that is in compliance with nondiscrimination and open membership requirements as outlined in California State University Executive Order 1068. In withdrawing University recognition, your organization is no longer afforded the privileges of University recognition (sic) Clubs and Organizations.

The attached letter then listed the penalties RJCF incurred for requiring its leaders to agree with its religious beliefs, which included:

- Ability to reserve two free meeting rooms per week;
- Recruiting CSUN students through official campus recruitment programs;
- Suspension of its university email and website accounts;
- Eligibility for student activity fee funding;
- Ability to receive mail at the University.

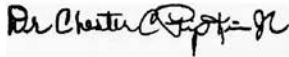
As a CSUN administrator subsequently explained, unrecognized student groups "will be charged the off-campus rate and will not be eligible to receive two free meetings per week in [university] rooms." The off-campus rental rate was \$120-\$200 per meeting, which RJCF students could not afford. As a result of being "de-recognized," some religious student groups paid thousands of dollars to rent meeting space and obtain insurance coverage-- both of which had been free for forty years and were still free to recognized student organizations.

Eventually, Cal State retreated from its position and provided a few religious groups with a letter stating that, under certain circumstances, their leadership selection processes could include questions about a candidate's religious beliefs. But the executive order has not been revised, and religious groups remain at the mercy of Cal State administrators on 23 campuses. While Cal State re-recognized the religious groups for the 2015-2016 academic year, the situation remains unsettled, and students' religious liberty and freedom of speech remain encumbered at Cal State.

Texas A&M University: For nearly 20 years, RJCF has been a recognized student group at TAMU. RJCF has always required that its leaders believe in Jesus Christ as their Lord and Savior. But in the fall of 2011, RJCF submitted the same constitution that had been approved in past years with its routine request for renewal of recognition as a registered religious student organization. The Office of Student Life, however, unexpectedly threatened to deny recognition unless RJCF changed its constitution to delete its requirement that its leaders share its core religious beliefs. Only after legal counsel sent a letter to TAMU's general counsel on behalf of RJCF did TAMU re-recognize RJCF as a student organization. The attached letter from Ms. Richardson details the situation.

This letter has addressed two situations in which RJCF has had its recognition as a student organization threatened because it requires its leaders to be religious. But there are many other such situations, as well as times when RJCF chapters have experienced restrictions by campus administrators on RJCF students' speech because it is religious or because RJCF is a religious organization. For this reason, we are deeply grateful for your attention to the problems religious students are encountering on college campuses across the country.

Respectfully submitted,



Dr. Chester C. Pipkin, Jr. Pastor
and President,
ReJOYce In Jesus Ministries, Inc.

California State University Northridge

Office of Student Involvement & Development

January 20, 2015

Cinnamon McCellen
Rejoyce in Jesus Campus Fellowship

Cc: Vicki Allen, Advisor

Dear Cinnamon:

This correspondence is to inform you that effective immediately your student organization, Rejoyce in Jesus Campus Fellowship, will no longer be recognized by California State University, Northridge.

Withdrawing or withholding of official recognition can occur when an organization has failed to meet the standards required for official recognition in a given year. The Rejoyce in Jesus Campus Fellowship organization will no longer be recognized given failure to submit an organizational constitution that is in compliance with non-discrimination and open membership requirements as outlined in California State University Executive Order 1068.

In withdrawing University recognition your organization is no longer afforded the privileges of University recognition Clubs and Organizations. Those include:

- Recruiting California State University, Northridge students through official campus recruitment programs (such as Meet the Clubs, Matafest, AS Fair, etc.).
- Utilizing the university name as a designation for your organization.
- Have a university issued email account and or website. If your club or organization has a current email or website, a request to suspend your email and website will be sent to the University's IT department and will be deactivated within a week.
- Eligibility for Associated Students, Inc. (A.S.) funding and utilization of AS financial and marketing resources and services.
- Eligibility for University Student Union (USU) facility use at a discounted rate. Only University recognized clubs or organizations are eligible for the discounted rates and fee waivers on room reservations in the USU. Groups of students not recognized by the university who reserve rooms through USU Reservations and Events Services will be charged the off-campus rate and will not be eligible to receive two free meetings per week in USU rooms. Rate information can be found at the following website: www.csun.edu/usu.
- Eligibility for USU co-sponsorship support. Any organization applying for co-sponsorship must be a University recognized club or organization, auxiliary or university department. Therefore, any group of students not officially recognized by the University would not be eligible to receive any USU Co-Sponsorship funding including, but not limited to, funding for costs of room reservations, event production costs, performer fees, food, or Performance Hall usage.
- Ability to have a mailbox and receive mail at the University. If you currently have a mailbox at the MIC it will be closed (all current contents if any, will be kept for you by the Club and Organization Advisor).

This loss of University recognition is effective immediately and notification has been sent to both the Associated Students and the University Student Union.

18111 Nordhoff Street, Northridge, California 91330-8261 . (818) 677-2393 . fax (818) 677-4596 . e-mail patrick.bailey@csun.edu

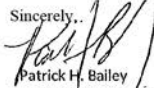
The California State University: Bakersfield, Channel Islands, Chico, Dominguez Hills, Fresno, Fullerton, East Bay, Humboldt, Long Beach, Los Angeles.

Maritime Academy, Monterey Bay, Northridge, Pomona, Sacramento, San Bernardino, San Diego, San Francisco, San Jose, San Luis Obispo, San Marcos, Sonoma, Stanislaus

If your organization determines that it would again like to be officially recognized by the University, please contact the Matador Involvement Center (MIC) located on the first floor of the USU to discuss how your organization can come into compliance with non-discrimination and open membership guidelines as outlined in E01068. Assistant Director Vicki Allen or Activities Coordinator Jennifer Villarreal are both available to assist you and can be reached at 818-677-5111 or via email at micleadership@csun.edu.

If you have any questions or additional concerns please contact me at 818.677.2393 or via email at patrj4iley@csun.edu

Sincerely..



Patrick H. Bailey

Director, Office of Student Involvement and Development
California State University, Northridge

CC: Associated Students University
Student Union Matador
Involvement Center
University Advisor for Rejoyce in Jesus Campus Fellowship

June 10, 2015

The Honorable Trent Franks, Chair
Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the
United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks,

My name is Cinnamon McCellen. I was the student president of the ReJOYce in Jesus Campus Fellowship ("RJCF") at California State University Northridge ("CSUN") from 2013-15. RJCF has been a recognized student group at CSUN for over 40 years and always required that its leaders believe in Jesus Christ as their Lord and Savior. In January 2015, we were told that RJCF would "no longer be recognized given failure to submit an organizational constitution that is in compliance with nondiscrimination and open membership requirements as outlined in California State University Executive Order 1068." As students of faith, we feel our constitutional rights are being violated and we are no longer welcome at CSU.

As a group whose membership draws many students from the African American community, RJCF understands the critical importance of nondiscrimination policies and discrimination is not something we take lightly. We have painfully come to learn that nondiscrimination policies can be misused, as CSU is doing by recently reinterpreting and misinterpreting its nondiscrimination policy to exclude religious student organizations from campus for being religious.

RJCF meets weekly for Bible study, prayer, and mutual encouragement. We help one another, pray for one another, and encourage one another. Many RJCF members are away from home for the first time. RJCF's meetings provide a spiritual home during the challenging adjustment to college life. Because Christian views are not always welcome in the classroom or dormitories, it is refreshing to have a place where we can be open about our faith and learn what the Bible says about specific problems we face or contrary views we hear from professors and other students.

On February 20, 2013, we received an email stating that RJCF's ability to remain a recognized student organization was in jeopardy as a result of Executive Order 1068. Many other religious groups at CSU received similar notices. In the summer of 2013, the religious groups petitioned the new chancellor for a moratorium on implementation of Executive Order 1068. We were grateful when the CSU chancellor announced a one-year moratorium for the 2013-14 academic year. The fact that the moratorium was sought by, and applied solely to, religious student groups showed that Executive Order 1068 really affected only the religious groups that could not in good conscience renounce their religious requirements for leadership. As a result of the moratorium, RJCF remained a recognized student group at CSUN for the 2013-2014 academic year.

Despite RJCF's and other religious groups' requests that the moratorium be extended, CSU refused to extend it for the 2014-15 academic year. After making all the changes that we could in good conscience make, RJCF submitted its constitution and the required recognition forms with a statement that it signed the forms based on RJCF's belief that it is not religious discrimination for a religious group to have religious leadership requirements, as it has had for the 41 years that it has been a recognized student organization at CSU, and as it will continue to have.

On January 22, 2015, I received a letter from the CSUN administration stating that RJCF "will no longer be recognized." RJCF could not pay the weekly rental fee of \$200 that CSU said we would have to pay to keep meeting in the room that we had held our weekly meetings in for free. We reluctantly moved our meetings off-campus.

Because we are no longer a recognized student group, we've lost numerous benefits. The most damaging consequences of CSU's discrimination are the inability to meet on campus, to advertise on campus and to participate in student organizational fairs. These are critical avenues for student groups to be accessible to new students and continue to grow and serve the campus community. Student groups that can't grow eventually can't function as members graduate.

Leaders are the life and future of any organization. Ask any corporation looking for a new CEO. To suggest that this is not the case seems extremely ignorant at best. How can someone lead you effectively in something which they do not believe? Just as it is understood that a fraternity by nature would be led by a male person and a sorority by a female person because of the nature and purpose of the organization, it should also be understood that a religious organization would best be led by a person of that religion. We are not asking a math club to require their leaders to be religious. The nature and purpose of our organization is religious and our leaders must be able to demonstrate and promote our beliefs in order to be effective. To call this discrimination is ridiculous.

We feel that CSU is engaging in religious discrimination by excluding religious student groups from campus solely because they exercise their basic religious liberty to choose their leaders according to their religious beliefs. But we see additional discrimination in the fact that CSU continues to allow fraternities and sororities to choose their leaders and members on the basis of sex, even though Executive Order 1068 prohibits sex discrimination. We deeply appreciate anything that you can do to restore our constitutional freedoms on CSU's campuses.

Sincerely,


Cinnamon McCellen

----- Forwarded message -----

From: [CSUN Administrator – name redacted]

Date: Mon, Nov 3, 2014 at 10:31 AM

Subject: RE: University Recognition - Important Message

To: [Rejoyce In Jesus Campus Fellowship Student President – name redacted]

Cc: [CSUN Administrator – name redacted]

Hi [RJCF Student President -- name redacted] —

USU Reservation and Event Services has provided me with current rates for off-campus organizations. Reservation are made for ½ day and or full day only, no hourly rates are available. I have asked for the rate of the current room used by RJCF and a room that is slightly smaller that could accommodate 20-30 people. These rates are for standard room set-up and do not include any special request (i.e. microphones, sound systems etc.)

Room Type	½ Day Rate	Full Day Rate
Balboa Room (Current RJCF Rm)	\$200	\$350
Reseda Room	\$120	\$200

[CSUN Administrator – name redacted]

June 10, 2015

The Honorable Trent Franks,
Chair Subcommittee on the Constitution and Civil Justice,
The Judiciary Committee of the United States House of Representatives
2141 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Franks:

My name is Dr. Ra'sheedah Richardson, and it is an honor to submit this letter for your review on the behalf of ReJOVce in JESUS Campus Fellowship (RJCF) at Texas A&M University (TAMU). I was a member of RJCF at TAMU during graduate school from 2003-2012. RJCF has been a recognized student organization on the campus of TAMU since 1996. RJCF enjoyed this status uninterrupted for well over a decade, until the 2011-2012 school year when TAMU restricted our status as a campus group.

RJCF hosts a number of activities and services open to the Texas A&M community, such as a weekly Bible study, weekend fellowship events and prayer. RJCF typically has from 20-30 students who participate. Personally, RJCF not only supported me through spiritual development and in my relationship with the Lord Jesus, but the fellowship encouraged me to pursue academic excellence and to develop character traits like integrity, wisdom, composure and faithfulness that have been essential for a successful professional career. RJCF has helped me as well as countless other students make the adjustments needed to stand through the pressures and challenges faced in college life and beyond.

In October 2011, the TAMU Office of Student Organization Development and Administration (OSODA) within the Department of Student Activities sent us an email taking exception to RJCF's criteria for voting membership and/or leadership. RJCF seeks to preserve the intent of our organization through our voting member/leadership requirements. OSODA cited the University's statement on harassment and discrimination which states, "Texas A&M University in accordance with applicable federal and state law prohibits discrimination, including harassment on the basis of race, color, national or ethnic origin, religion, sex, disability, age, sexual orientation, or veteran status." The email went on to state that, "This statement extends to student organization membership and leadership, and since ReJOVce in Jesus has a religious component outlined for its voting membership and leadership eligibility, your criteria warrants further review."

Following a review process which included a face-to-face meeting with Office of Student Organization Development and Administration personnel, RJCF was asked to change its constitution in order to remain a recognized student organization at TAMU. I and others in our group were greatly troubled by what we felt was an attack on our rights as students of faith on campus and a misuse of TAMU's non-discrimination policy. We were informed that many other religious student groups at Texas A&M received similar notices and were forced to review and/or revise their constitutions.

For a Christian student organization having leadership that holds to the same beliefs and values is essential. Without it, we would not be able to preserve the integrity of our values, beliefs and purposes as a faith-based group. I would have personally felt very uncomfortable if the leadership of our organization had been someone who did not subscribe to the tenets of the Christian faith as it would have changed the direction of RJCF monumentally. RJCF would have ceased to have the same

meaning and purpose as a Christian organization if a non-Christian was an officer. This would have subsequently caused me to withdraw my membership. As a result I would not have received the support offered by RJCF through college.

Without student group recognition, we would not have been able to continue to meet freely on campus to encourage each other in our growth both spiritually and academically. According to TAMU policy non-recognized student groups are required to pay \$100 per instance for each room reservation. It would have cost our group up to \$7,600 per academic year to continue to operate on campus. This is far too great a hardship for a small student group like RJCF to maintain.

Additionally, non-recognized student groups have a much more difficult time advertising for the group on campus. Specifically, they are unable to post fliers, reserve other advertising media or reserve campus outdoor space. Non-recognized student groups are also not allowed to participate in the MSC Open House- the most significant campus-wide event that allows students to connect with and learn about organizations consistent with their interests, needs or beliefs and what they have to offer.

I have no doubt that had not we sought legal assistance clarifying the interpretation of federal law, RJCF would have ceased to exist on Texas A&M University's campus. After reviewing a letter received from our legal counsel, the University changed its position and acknowledged that RJCF "meets the criteria necessary for an exemption to the open membership requirement outlined in Texas A&M Student Rule 41.1.S which states that student organizations should 'be open in its membership unless otherwise permitted under applicable federal law.'" RJCF's recognized status was subsequently restored.

Sincerely,



Ra'sheedah Richardson, Ph.D.





Young America's Foundation
Memo Re: Protecting the Right to Free Expression on College Campuses
Prepared by Emily Jashinsky, Program Officer for Public Relations, Young America's
Foundation
April 12, 2016

Young America's Foundation would like to thank the Way & Means Subcommittee on Oversight for investigating the critically important issue of censorship on college campuses.

The Foundation serves as the principal outreach organization of the Conservative Movement. We are committed to ensuring that increasing numbers of young Americans understand and are inspired by the ideas of individual freedom, a strong national defense, free enterprise, and traditional values. We accomplish our mission by providing essential conferences, seminars, educational materials, internships, and speakers to young people across the country.

For years, our organization has worked on a daily basis with conservative students around the country whose ability to speak freely on their campuses is regularly curtailed. The situation has escalated to the point of violence in recent months.

Due to the efforts of politically correct professors and administrators, ideologically fair and balanced conversations rarely occur at many, if not most, of our nation's colleges and universities. To make matters worse, students who express conservative viewpoints have literally been confronted by violent protests, threats, and organized censorship initiatives recently.

The Foundation understands and appreciates the Subcommittee's particular focus on the problem of public universities wielding their tax exempt statuses in an effort to censor ideological expression.

We would like to offer a few key examples of the broader pattern of general censorship to demonstrate the overall severity of the situation.

*California State University Los Angeles, public, IRC Section 501(c)(3)**

Last month, the Young Americans for Freedom chapter at California State University Los Angeles attempted to host a lecture by Ben Shapiro on the culture of political correctness. Unfortunately, however, a mob of violent students and professors blocked the entrance to the event, physically assaulted the conservative students trying to hear the lecture, and forced police to escort attendees into the lecture in small groups due to the fear of physical harm.

Robert Weide, a professor of sociology, called the YAF students "white supremacists" and threatened to wrestle them. Another professor, Melina Abdullah, largely organized the dangerous protest against the YAF chapter. University president William Covino attempted to cancel the event the day before it was scheduled to occur, claiming he would only let Shapiro speak if a liberal speaker were also present at the event in order to provide balance, all in the interest of "diversity." Not surprisingly, CSULA has never applied this standard when liberals have spoken on campus.

In the aftermath of the protests, students demanded Covino step down, not because he attempted to stifle free speech, but because he allowed the lecture to happen. The YAF chapter has since been targeted by campaigns labeling them "Young AmeriKKKans for Freedom."

Virginia Tech University, public, IRC Section 115



When the YAF chapter at Virginia Tech attempted to host a lecture on illegal immigration by Bay Buchanan, radical elements of university community erupted in outrage. Professors and students targeted the chapter chair aggressively. One faculty member even referred to her as a racist in front of his class. The school funding board defunded the YAF chapter, effectively stripping conservatives of their voice on campus by revoking their ability to exist as a student group. This decision was ultimately reversed after intense pressure applied by YAF and media outlets like Fox News.

George Washington University, private, IRC Section 501(c)(3)

When the student government at George Washington University passed a resolution asking the school to implement mandatory sensitivity training focused on transgender issues, the chair of GW's YAF chapter told the student newspaper they would potentially seek a religious exemption. The school's LGBT student group immediately lashed out, asking for the YAF chapter to be defunded by the university, calling them a hate group, and claiming they had "committed an act of violence" against transgender people by speaking out against the training. The chapter was subjected to weeks of harassment from liberal students who called them "cancerous" and compared them to ISIS.

Pennsylvania State University, public, IRC Section 115

At Pennsylvania State University, the YAF chapter was targeted by administrators for handing out copies of the United States Constitution in a free speech zone. On Constitution Day, the chapter gathered in the free speech zone to hand out copies of the Constitution, but administrators told them they were violating university policy and asked them to stop distributing the Constitutions. The entire exchange was caught on camera and exposed to the public. To be clear, on Constitution Day, a public university attempted to curtail the free speech rights of students simply trying to hand out the Constitution in a free speech zone.

University of Michigan, public, IRC Section 501(c)(3)

At the University of Michigan, a group of progressive students urged the school not to screen the movie *American Sniper* due to its alleged "Islamophobia." The school obliged and canceled its scheduled event. Instead of showing *American Sniper*, the school announced it would be showing *Paddington Bear*, a children's movie. This is symbolic of larger issues with the culture of political correctness on our nation's campuses. The school coddled its students to the point of canceling a screening of an Oscar-nominated movie about a decorated American hero and replaced it with a children's movie, all in the name of political correctness. Michigan YAF organized an effort to fight the school's absurd adherence to the doctrines of political correctness and was subjected to a number of attacks from their liberal peers. With the support of Michigan football coach Jim Harbaugh, the YAF chapter won and persuaded the school to screen the film.

Thank you again for all of your efforts to address the increasingly severe problem of political correctness and censorship on this nation's college campuses. Our students are in desperate need of support. If we intend to save this generation from the grips of ideological monopoly and political correctness, both of which undercut the principles this country was founded upon, we must dedicate significant energy to addressing these issues.

Please let us know how we can assist in your important mission. We are eager to offer our resources and support.

**CSULA is tax-exempt from income taxes, but it does pay payroll taxes for employees and tax on income earned through activities not related to its educational activities*