



April 11, 2017

Michael A. Mitchell, Ph.D.
Vice President for Student Affairs and Dean of Students
University of South Alabama
Student Center, Suite 245
350 Campus Drive
Mobile, Alabama 36688-0002

Sent via Electronic Mail (mmitchell@southalabama.edu)

URGENT

Dear Vice President Mitchell:

As you know, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

We're in receipt of your letter dated September 26, 2016, on behalf of the University of South Alabama (USA), addressing concerns raised in our April 12 and August 31, 2016 letters. These concerns, you'll recall, centered on the university's 501(c)(3) policy as applied to emails sent by registered student organizations. In response, USA provided an amended policy.

Unfortunately, that policy is now being applied to subject a student, David Meredith, to disciplinary proceedings because he refused to remove a "Trump/Pence 2016" sign from his dormitory window, which an administrator asserts is prohibited by USA's 501(c)(3) policy. As a result, FIRE is again concerned about the threat to freedom of expression at USA, and calls upon the university to drop the charges against Meredith.

I. FACTS

The following is our understanding of the facts. Please inform us if you believe we are in error.

David Meredith is a student at the University of South Alabama, where he resides in Delta 5, one of USA's thirty-two residence halls.

On March 30, Meredith posted, in his dormitory room window, a sign from the 2016 Trump/Pence campaign, reading “Trump Pence Make America Great Again! 2016” and “Paid for by Donald J. Trump for President, Inc.” Donald Trump was elected president of the United States on November 8, 2016, nearly five months before Meredith posted his sign.

On March 31, the day after Meredith posted his sign, he received an email from Dylan S. Lloyd, the Community Director for the Delta 3, 4, and 5 residence halls. Lloyd’s email stated that he “noticed a Trump sign in your window” and that it “is against university policy for political signs to be posted in windows, including residence halls.” Lloyd asked Meredith and his roommate to remove the sign within 24 hours and assigned a Resident Assistant to check on their compliance.

Meredith’s response, half an hour later, was an email reading, simply, “1st amendment.” Lloyd responded, acknowledging that Meredith does “have the 1st Amendment right” but that Meredith “currently live[s] in a federal building that cannot support political candidates.” Accordingly, “the sign must be removed.” Meredith, accepting this hypothetical, carried it through to its logical conclusion, asking Lloyd whether “the name of the president and vice president cannot be posted on federal buildings?” Lloyd, apparently willing to continue sparring, told Meredith that the “sign in your window is a political sign that shows support for a political candidate,” and invited Meredith to set up a meeting if he would like to discuss the matter in person.

Meredith declined Lloyd’s invitation and proffered that he would not be removing the Trump/Pence sign. Lloyd informed Meredith that “if it is not removed within 24 hours then this will turn into a judicial case and you will have to meet with me to discuss breaking policy.” Meredith responded, “I guess I will hear from you in 24 hours.”

At 1:28 p.m. on March 31, about half an hour after Meredith made his prediction, Lloyd emailed Meredith a copy of USA’s 501(c)(3) policy,¹ explaining that “I just want to be sure you are clear on what policy is, so here it is[.]” Meredith explained that he wasn’t endorsing a political candidate, but instead was “endorsing the President of the United States” and that he was “also not speaking on behalf of the school.” Lloyd responded: “I agree that you are not, but that is how it can be perceived because the sign is in the window of a university owned building.” As a result, the “sign can be anywhere in your room, just not in the window.” The

¹ The policy, as quoted in Lloyd’s email, appears in the 2016-2017 edition of *The Lowdown*, the University of South Alabama’s student handbook, at pages 43 and 45–46. The provisions on pages 45–46 are under the heading “Student Organizations and Political Activities” and written to apply to registered student organizations, not individual students. The statement on page 43, also under a heading purporting to apply to student organizations, states simply that “As a 501(c)(3) organization, the University may not support or appear to support candidates for city, county, state, or federal governments and therefore may not financially support or fund activities or groups, including registered student organizations, which promote individual political candidates of any kind.” We’re unable to locate a separate policy that applies, as written, to individual students. This is another reason, independent of the First Amendment discussion below, why the accusations against Meredith are meritless. A student cannot be punished for refusing to comply with a directive that a government official had no power to give – or, here, is prohibited by the First Amendment from giving.

remainder of the email conversation continued in this course, with Meredith explaining that the campaign was over, and Lloyd responding that Trump “will run for reelection in four years” so, therefore, the sign’s presence “makes it look like the university supports Trump as a candidate.” Meredith persisted in his refusal to remove the sign.

On April 10, 2017, Assistant Director of Housing Amanda Freyaldenhoven sent Meredith a notice informing him that he is to appear in a Housing Judicial Conference “to discuss your involvement in this incident and determine your continued status in the residence halls.” The notice states that “the incident violated” two provisions of Housing Community Standards: Failure to Comply (07o) and University Violation (07n). The Housing Judicial Conference is set for April 12 at 4:00 p.m.

II. ANALYSIS

As the university is aware, and as FIRE has set forth in previous correspondence, maintaining tax-exempt status under section 501(c)(3) does not require painstaking, door-by-door censorship of student political speech by campus administrators. To the contrary, political speech is at the very core of the First Amendment, which forbids the micromanagement of student speech exhibited here. This is true whether Meredith’s sign was intended to promote a candidate in an election yesterday or an election tomorrow.

It has long been settled law that the First Amendment is binding on public institutions of higher education such as the University of South Alabama. *See Healy v. James*, 408 U.S. 169, 180 (1972) (“[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, ‘the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.’”) (internal citation omitted).

Political speech, including political signs like the one displayed by Meredith, is at the core of the First Amendment. “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Promotion of a candidate for the highest office in the land is undoubtedly “core political speech” at the very heart of the First Amendment, where its protection is “at its zenith.” *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)). In striking down a rule prohibiting the display of signs, the Supreme Court observed that political signs, “[o]ften placed . . . in windows . . . play an important part in political campaigns” and are a “venerable means of communication that is both unique and important.” *City of Ladue v. Gilleo*, 512 U.S. 43, 54–55 (1994). Absent some compelling government interest not present here, the university may not prohibit students from displaying political messages, including those in support of partisan political campaigns.

The university's status as a 501(c)(3) entity does not provide a compelling interest. To the contrary, it is abundantly clear that a student's individual endorsement of a political candidate cannot reasonably be construed to be an endorsement by the institution he or she attends. While the university itself is prohibited from participating or intervening in a political campaign, *see* 26 C.F.R. § 1.501(c)(3)-1(c)(3)(i)-(iii), the application of this policy to an individual student's sign ignores the distinction between institutional expression and that of its students, who are strongly presumed to speak only for themselves.

The Supreme Court has made clear, for example, that use of a public university's facilities by a religious student group—on the same basis made available to other student groups—no more committed the institution to its religious views than the views of any other student group. *Widmar v. Vincent*, 454 U.S. 263, 274 (1981); *see also Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000) (expressive activities of student organizations at public university, funded by mandatory student activity fees, were not speech by the institution); *Rosenberger v. Rector & Visitors of the 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).

Internal Revenue Service (IRS) training materials and rulings are in accord. IRS training materials have drawn a distinction between “the individual political campaign activities of students” and their universities, and the agency has noted that “[t]he actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from a school official.” Judith E. Kindell and John Francis Reilly, “Election Year Issues,” Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 365 (2002), available at <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>. “In order to constitute participation or intervention in a political campaign . . . the political activity must be that of the college or university and not the individual activity of its faculty, staff or students.” *Id.* at 377. Before that, in 1972, IRS Rev. Ruling 72-513 held that a student newspaper receiving funding and other resources from an educational institution does not endanger the institution's tax-exempt status by endorsing a candidate. I.R.S. Rev. Rul. 72-513, 1972-2 C.B. 246.

Accordingly, students' display of political campaign signs in their dormitory windows does not risk the university's tax-exempt status, nor does that status indulge the university in regulating student political speech. Under Lloyd's application of the 501(c)(3) policy, a student may display a political sign only where nobody can see it. No person, however unreasonable, could be misled into believing that the University of South Alabama had chosen to make its endorsement, in an election for the highest office in the land, through a solitary sign placed in one of dozens of windows in one of thirty-two dormitory buildings. That the university furnishes living areas to students, at the students' expense, does not render students' speech that of the university. A contrary interpretation, untenable at a university of any caliber, would require administrators to police and censor nearly every political expression on campus.

Nor would signs placed by dozens of students in their windows be, in the aggregate, sufficient to lull an otherwise reasonable person into believing that the university has endorsed a particular candidate. Rather, a diverse student body is likely to have a diversity of views on who should be elected, resulting in students displaying signs promoting candidates at odds with one another. Permitting signs of differing views is a sign of lively debate, and a strong way to demonstrate to any reasonable observer that no one student's sign constitutes the institution's speech.

III. CONCLUSION

The University of South Alabama's interpretation of its 501(c)(3) policy as applied to David Meredith again undermines student political speech, which is unequivocally protected by the First Amendment.

Because Meredith's hearing is set for Wednesday, April 12 at 4:00 p.m., we request the university's confirmation by noon on April 12 that the hearing has been vacated and the charges dropped.

Our letter of April 12, 2016, called upon USA to consider adopting a statement similar to that of Muhlenberg College, which makes clear that individual students' political expression do not jeopardize the institution's 501(c)(3) status. We renew that call today. Administrators have on multiple, independent occasions interpreted the university's 501(c)(3) statement to authorize, if not require, the censorship of student political speech clearly protected by the First Amendment.

Sincerely,



Adam B. Steinbaugh
Senior Program Officer, Individual Rights Defense Program