



May 4, 2022

Rev. Daniel S. Hendrickson
Office of the President
Creighton University
2500 California Plaza
Omaha, Nebraska 68178

URGENT

Sent via U.S. Mail and Electronic Mail (president@creighton.edu)

Dear President Hendrickson:

FIRE¹ is disappointed to not have received a response to our April 13, 2022, letter² concerning Creighton University's erroneous invocation of its tax-exempt status to justify cancellation of a student-organized Turning Point USA event. Since then, our concerns have compounded given the university's suspension of and disciplinary investigation into the TPUSA student chapter based on the event, which featured conservative speakers.

Creighton may disagree with the viewpoints of speakers TPUSA invites to campus. But the university's strong commitments to students that they enjoy free expression bar Creighton from restricting students' expressive and associational rights on a content- or viewpoint-discriminatory basis.

As previously explained, the pertinent facts show both the university's clear misunderstanding of its obligations under section 501(c)(3) of the Internal Revenue Code and a disregard for the free expression promises Creighton makes to its students. We appreciate that you may have additional information to offer and invite you to share it with us.

As explained in our previous letter, TPUSA was to host an event on April 9 which featured conservative speakers, but the university cancelled it just days before it was to occur, allegedly based on changes to description and schedules speakers which the university said

¹ As you may recall from recent correspondence, FIRE is a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Enclosed.

endangered the university’s tax-exempt status. On top of that, Creighton immediately suspended the TPUSA chapter and has subjected it to a disciplinary investigation.³

Creighton’s explanation for investigating TPUSA is that:

The social media and event description shift the purpose of the event from educational to political. This jeopardizes Creighton University’s 501 (c) (3) non-profit designation. It also is a violation of the Student Organization event process within the Student Leadership and Involvement Center policies.⁴

TPUSA has a disciplinary hearing scheduled for this afternoon.

Creighton admirably commits that it “strives to be a community that is dedicated to the pursuit of truth in all its forms and to the betterment of society” and is “committed to its role as an academic institution in which the widest possible freedom of expression and openness to diverse ideas should be responsibly presented and examined.”⁵ The university says this is why it “embrace[s] freedom of thought and expression”—because “[e]ssential elements in the Ignatian tradition offer emphases on encouragement of active dialogue and on the innate dignity of each member of our community.”⁶ Having made these laudable promises of freedom of expression to students, Creighton is morally and contractually required to keep them.⁷

As our previous letter explained, legal decisions concerning the scope of the “freedom of speech” protected by the First Amendment inform students’ reasonable expectations as to the meaning of the expressive rights Creighton guarantees. Freedom of expression extends to the right to “associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”⁸ It also protects core political speech, including promotion of candidates for office as well as both popular and unpopular political viewpoints.

A commitment to free speech presupposes that some on campus may object to an expressed viewpoint, but the “bedrock principle underlying” free speech is that it may not be limited “simply because society finds the idea itself offensive or disagreeable[.]”⁹ It is this counter-majoritarian principle that protects “insulting, and even outrageous, speech in order to

³ Email from Tanya Winegard, Vice Provost for Student Life, Creighton Univ., to Creighton TPUSA (Apr. 8, 2022, 1:49 PM) (on file with author).

⁴ Letter from Desiree Nownes, Senior Director for Community Standards and Wellbeing, Creighton Univ., to Creighton TPUSA (May 1, 2022) (on file with author).

⁵ *Student Handbook 2021-2022*, CREIGHTON UNIV., https://www.creighton.edu/sites/default/files/2022-01/2021_2022_Student_Handbook%20Spring%20Update_1.pdf (last visited May 3, 2022).

⁶ *Id.*

⁷ *Corso v. Creighton Univ.*, 731 F.2d 529 (8th Cir. 1984) (disciplinary procedures found in the student handbook are enforced as a contract).

⁸ *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000) (quoting, in part, *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)).

⁹ *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (citing *Texas v. Johnson*, 491 U.S. 397, 414 (1989)).

provide adequate breathing space” for public debate,¹⁰ recognizing those in authority “cannot make principled distinctions” in determining what speech is sufficiently offensive to suppress.¹¹

This principle is particularly important in higher education, where the exchange of views may sometimes be caustic, provocative, or inflammatory. Consider, for example, a student newspaper’s use of a vulgar headline (“Motherfucker Acquitted”) and a front-page “political cartoon . . . depicting policemen raping the Statue of Liberty and the Goddess of Justice.”¹² These words and images—published at the height of the Vietnam War—were no doubt deeply offensive to many at a time of deep polarization and unrest. Yet, as the Supreme Court held, “the mere dissemination of ideas,” however “offensive” to others, “may not be shut off in the name alone of ‘conventions of decency.’”¹³

Creighton’s unilateral cancellation of TPUSA’s event, suspension of the group, and investigation into its members violate the university’s own policies encouraging “active dialogue” and “embrac[ing] freedom of thought.”¹⁴

Creighton misunderstands its obligations as a 501(c)(3) organization, which merely prohibit the university *itself* from participating or intervening in a political campaign.¹⁵ Internal Revenue Service (IRS) training materials and rulings draw a clear distinction between “the individual political campaign activities of students” and their universities, stating plainly that “actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from” university officials.¹⁶ “In order to constitute participation or intervention in a political campaign . . . the political activity must be that of the college or university and not the individual activity of its faculty, staff or students.”¹⁷ These obligations do not require Creighton to violate its laudable free speech promises to students and faculty and to instead censor them when they *personally* engage in political speech on campus.

Given Creighton’s misunderstanding of its obligations under section 501(c)(3) and because no action could legitimately be taken against TPUSA due to the university’s strong free expression promises, there is no basis to move forward with the disciplinary hearing against TPUSA and the investigation must be dropped.

The university is not without recourse when it disagrees with speech on campus: Administrators may criticize the expression, create opportunity for additional dialogue on controversial issues, or otherwise avail themselves of their own expressive right to respond.

¹⁰ *Boos v. Barry*, 485 U.S. 312, 322 (1988) (cleaned up).

¹¹ *Cohen v. California*, 403 U.S. 15, 25 (1971).

¹² *Papish v. Bd. of Curators of the Univ. of Mo.*, 410 U.S. 667, 667–68 (1973).

¹³ *Id.*

¹⁴ *Student Handbook 2021-2022*, *supra* note 5.

¹⁵ See 26 C.F.R. § 1.501(c)(3)-1(c)(3)(i)-(iii).

¹⁶ Judith E. Kindell and John Francis Reilly, “Election Year Issues,” Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 365 (2002), *available at* <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

¹⁷ *Id.* at 377.

But as a university that promises free speech, Creighton may not impose institutional punishment on students for exercising their expressive right to invite a campus speaker.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, May 6, 2022, confirming Creighton has ended its investigation into TPUSA and will not discipline, de-recognize, or de-platform the group or its members. We also ask that the university reaffirm its commitments to free expression on campus to ensure students know they can speak freely and engage with a variety of viewpoints on campus without fear of administrative retribution.

Sincerely,



Sabrina Conza
Program Officer, Individual Rights Defense Program

Cc: Tanya Winegard, Vice Provost for Student Life
Desiree Nownes, Senior Director for Community Standards and Wellbeing

Encl.



April 13, 2022

Rev. Daniel S. Hendrickson
Office of the President
Creighton University
2500 California Plaza
Omaha, Nebraska 68178

URGENT

Sent via U.S. Mail and Electronic Mail (president@creighton.edu)

Dear President Hendrickson:

The Foundation for Individual Rights in Education¹ is concerned by reports that Creighton University revoked approval of a student-organized event because it believed changes to the event could jeopardize Creighton's tax-exempt status.² However, Creighton's status as a 501(c)(3) organization under the Internal Revenue Code does not compel it to depart from its commitments to students' freedom of expression by restricting their political expression, and any interpretation Creighton has adopted otherwise is misplaced.

I. Creighton Cancels Student Organized Event Citing Tax-Exempt Status

The following is our understanding of the pertinent facts, based on public information. We appreciate that you may have additional information to offer and invite you to share it with us.

Turning Point USA ("TPUSA") is a registered student group at Creighton.³ Creighton told the Omaha World-Herald it originally approved a TPUSA-hosted campus event planned for April 9.⁴ However, after learning TPUSA had changed the event's name from "Introduction to Nebraska Politics Conference" to "Take Back Nebraska Summit '22"—and hearing that

¹ FIRE is a nonpartisan nonprofit dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America's college campuses.

² Dan Crisler, *Creighton University reverses decision to allow conservative political event on campus*, OMAHA WORLD-HERALD (Apr. 11, 2022), https://omaha.com/news/local/education/creighton-university-reverses-decision-to-allow-conservative-political-event-on-campus/article_2c7d578a-b9cc-11ec-9658-ebee6574446a.html.

³ Turning Point USA, CREIGHTON UNIV., <https://creighton.campuslabs.com/engage/organization/tpusa> (last visited Apr. 13, 2022).

⁴ Dan Crisler, *supra* note 2.

conservative activist Jack Posobiec would speak at the event—the university revoked permission for the event to take place on campus.⁵ In doing so, it justified its decision by citing its asserted obligation not to take political positions as a tax-exempt organization.⁶

II. Creighton Will Not Risk its 501(c)(3) Status by Adhering to its Commitments to Students' Freedom of Expression

Maintaining tax-exempt status under section 501(c)(3) does not require censorship of student political speech by campus administrators. To the contrary, Creighton's admirable commitment to protecting its students' political expression—if it adheres to that commitment—shields the university from liability for *student* political expression, which is not participation in a political campaign by the *university*. If anything, it is in Creighton's institutional interest to *refrain from censoring* student political expression, because honoring its commitment to free expression in that fashion avoids the appearance that the *university* is endorsing political viewpoints.

To be sure, as a religious institution not bound by the First Amendment, Creighton has no obligation to promise students expressive rights. However, Creighton's handbook admirably commits that it “strives to be a community that is dedicated to the pursuit of truth in all its forms and to the betterment of society” and is “committed to its role as an academic institution in which the widest possible freedom of expression and openness to diverse ideas should be responsibly presented and examined.”⁷ The university says this is why it “embrace[s] freedom of thought and expression”—because “[e]ssential elements in the Ignatian tradition offer emphases on encouragement of active dialogue and on the innate dignity of each member of our community.”⁸ Having made these laudable promises of freedom of expression to students, Creighton is morally and contractually required to keep them.⁹

Legal decisions concerning the scope of the “freedom of speech” protected by the First Amendment inform students' reasonable expectations as to the meaning of the university's promise that its students enjoy freedom of expression. “Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs.”¹⁰ Promotion of a candidate for the highest office in the land is undoubtedly “core political speech” at the very heart of freedom of expression, where protection is “at its zenith.”¹¹

⁵ *Id.*

⁶ *Id.*

⁷ Student Handbook 2021-2022, CREIGHTON UNIV., https://www.creighton.edu/sites/default/files/2022-01/2021_2022_Student_Handbook%20Spring%20Update_1.pdf (last visited Apr. 13, 2022).

⁸ *Id.*

⁹ *Corso v. Creighton Univ.*, 731 F.2d 529 (8th Cir. 1984). (Disciplinary procedures found in the student handbook are enforced as a contract.)

¹⁰ *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

¹¹ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182, 186–87 (1999) (quoting *Meyer v. Grant*, 486 U.S. 414 (1988)).

Creighton’s obligations as a 501(c)(3) organization do not require the university to censor student political expression. Creighton appears to misunderstand its obligations, which merely prohibit the university *itself* from participating or intervening in a political campaign.¹² These obligations do not require the university to violate its laudable free speech promises to students and faculty and to instead censor them when they *personally* engage in political speech on campus.

Creighton’s revocation of permission for TPUSA to host an event featuring conservative figures and endorsing conservative ideals ignores the distinction between institutional expression and the expression of its students, who are strongly presumed to speak only for themselves. To the contrary, it is abundantly clear that a student’s—or student organization’s—endorsement of a political party or candidate cannot reasonably be construed to be an endorsement by the institution that the student attends.

Internal Revenue Service (IRS) training materials and rulings draw a clear distinction between “the individual political campaign activities of students” and their universities, stating plainly that “[t]he actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from” university officials.¹³ “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.”¹⁴ The IRS has 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.¹⁵ The Supreme Court has also held the use of a public university’s facilities by a religious student group—on the same basis made available to other student groups—no more committed the institution to the religious group’s religious views than to the views of any other student group.¹⁶

TPUSA’s event advocating for conservative viewpoints does not risk the university’s tax-exempt status, nor does that status, therefore, provide a defensible basis for regulating student political speech. No reasonable person could be misled into believing Creighton has chosen to endorse conservative viewpoints simply because a student organization held a political event featuring conservative commentators on campus. To the contrary, students and other observers of political speech would naturally understand it to be the speech of the organization, as campuses are, by their nature, places of contested expression. Creighton commendably acknowledges and nurtures this expectation in its policy documents, committing to protecting the exchange of views.

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

¹³ 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>.

¹⁴ *Id.* at 377.

¹⁵ I.R.S. Rev. Rul. 72-513, 1972-2 C.B. 246.

¹⁶ *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).

III. Conclusion

Although this event has already taken place off-campus, given Creighton's commitments to free expression, it is obligated to now clarify to students and student organizations that they may personally host events endorsing specific viewpoints without facing censorship or other punishment by their university.

We thus request a response to this letter by close of business on April 20, 2022, affirming that Creighton will allow student organizations to engage in political expression and support their preferred candidates and viewpoints in their individual capacity.

Sincerely,



Sabrina Conza
Program Officer, Individual Rights Defense Program

Cc: Jim Jansen, General Counsel