



September 19, 2024

Christopher L. Eisgruber
Office of the President
Princeton University
1 Nassau Hall
Princeton, New Jersey 21801

URGENT

Sent via U.S. Mail and Electronic Mail (eisgruber@princeton.edu)

Dear President Eisgruber:

FIRE, a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Princeton University prohibiting the Whig-Clisophic Society from using university spaces for a live recording of the ***Advisory Opinions*** podcast, ostensibly in the name of preserving Princeton's tax-exempt status. Princeton's status as a nonprofit neither compels nor justifies this departure from the university's promises of free expression. Thus, Princeton must declare publicly that student organizations may host events using generally accessible university resources regardless of those events' content.

On September 16, Princeton's Whig-Clisophic Society, a registered student organization, held a live recording of the ***Advisory Opinions*** podcast hosted by journalists David French and Sarah Isgur.² The podcast focuses on legal and cultural issues in American society, and past episodes have addressed such matters as regulating online platforms,³ courts' deference to

¹ As you will recall from previous correspondence, the Foundation for Individual Rights and Expression is a nonpartisan nonprofit dedicated to defending freedom of speech. You can learn more about our mission and activities at thefire.org.

² David French & Sarah Isgur, ***Did a Justice Leak to the New York Times?***, *Advisory Opinions* (2024), <https://open.spotify.com/episode/1QC46SquIYNOzr3Fbraom?si=78ebf43b219842c1>. This recitation reflects our understanding of the pertinent facts. We appreciate that you may have additional information and invite you to share it with us.

³ David French & Sarah Isgur, ***Free Speech vs. the Algorithm***, *Advisory Opinions* (2024), <https://open.spotify.com/episode/1izwXO6DKDPaJFzXwaYJg7?si=993c5a03875844de>.

federal agencies,⁴ and the prosecution of former President Donald Trump.⁵ While French and Isgur often discuss the political issues and candidates of the day, they are not themselves candidates, nor do they use the podcast to campaign.⁶ Despite this, Princeton informed Whig-Clio that the organization could not reserve campus rooms to host the podcast because the use of campus resources would jeopardize the university's tax-exempt status. Princeton's decision forced Whig-Clio to host the event at the Princeton Public Library.

Princeton's decision to deny Whig-Clio the right to host the podcast on campus suggests that the university misunderstands its obligations as a nonprofit organization. The Internal Revenue Code prohibits nonprofit higher education institutions *themselves* from participating or intervening in a political campaign.⁷ However, it certainly does not require institutions to censor the political speech of campus student groups. The IRS makes clear that it does not attribute a student's—or student organization's—endorsement of a political party or candidate to the institution the student attends.⁸ “[T]he individual political campaign activities of students ... are not attributed to an educational institution unless they are undertaken *at the direction of*” university officials.⁹ To run afoul of IRS rules, “the political activity must be that of the college or university and not the individual activity of its faculty, staff or students.”¹⁰ The IRS has determined, for example, that a student newspaper receiving funding and other resources, including office space, from an educational institution does not endanger the institution's tax-exempt status by endorsing a candidate.¹¹

Thus, adherence to Princeton's admirable commitment to free expression¹² does not violate IRS regulations, but instead shields the university from IRS sanctions for political expression

⁴ David French & Sarah Isgur, *Chevron Is Dead, Long Live Chevron*, Advisory Opinions (2024), <https://open.spotify.com/episode/3NpTcr5h1SO1KfvMLNhDUn?si=3d9cf1cc69364f94>.

⁵ David French & Sarah Isgur, *Indictment Watch: Georgia on My Mind*, Advisory Opinions (2023), <https://open.spotify.com/episode/1iJHC9P5Bf0PyIkSRLzx32?si=ecb32a8bcf714707>.

⁶ *Id.*

⁷ See 26 C.F.R. §§ 1.501(c)(3)-1(c)(3)(i)–(iii).

⁸ I.R.S. Rev. Rul. 72-512, 1972-2 C.B. 246, 1. Further, Whig-Clio does not endorse candidates for public office or even endorse political beliefs simply by hosting a popular legal podcast or other speakers. Donald Gilpin, *254 Years of Freedom of Speech, Civil Discourse, and Camaraderie at Princeton University*, PRINCETON MAG., (last visited Sept. 18, 2024), <https://www.princetonmagazine.com/whig-clio>.

⁹ JUDITH E. KINDELL & JOHN FRANCIS REILLY, *Election Year Issues*, I.R.S., 365 (2002), <http://www.irs.gov/pub/irs-tege/eotopici02.pdf> (emphasis added).

¹⁰ *Id.* at 377. The Supreme Court has further held the use of a 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. *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).

¹¹ I.R.S. Rev. Rul. 72-513, 1972-2 C.B. 246.

¹² *Rights, Rules, Responsibilities*, Statement on Freedom of Expression, PRINCETON UNIV., <https://rrr.princeton.edu/university-wide-regulations/11-university-principles-general-conduct-and-regulations/> [<https://perma.cc/8VV9-DGAP>].

by students or their guests by making crystal clear this expression does not belong to the institution itself. This is why Princeton, like thousands of other colleges and universities across the country, is free to—and does—host both College Democrat and College Republican student organizations, as well as nonpartisan organizations like Whig-Clio. Princeton’s commitment to free expression also places an ethical and legal obligation on the university to refrain from discriminating against student groups for the content of their expressive activities.

While Princeton is a private university, 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 “the broadest possible latitude to speak, write, listen, challenge, and learn.”¹³ Denying access to generally accessible resources on the basis of expressive content poses an impermissible burden on an organization’s associational rights.¹⁴ Restricting organizations’ ability to host expressive events in campus spaces necessarily makes those events less accessible and hampers their ability to contribute to “the intellectual give and take of campus debate.”¹⁵ This is especially true when it comes to political speech such as the *Advisory Opinions* podcast hosted by Whig-Clio, as “there is practically universal agreement that a major purpose of [free expression] was to protect the free discussion of governmental affairs.”¹⁶

In this case, the damage to Whig-Clio by forcing the event off campus has already been done. Given its commitments to free expression, however, and especially in the heart of presidential election season, Princeton must clarify to students and student organizations that they may host political events without facing censorship or other punishment.

Given the urgent nature of this matter, we request a substantive response to this letter no later than the close of business on Thursday, September 26, 2024, confirming Princeton respects student organizations’ right to host political speakers.

Sincerely,



Dominic Coletti
Program Officer, Campus Rights Advocacy

¹³ *Id.*

¹⁴ *See Healy v. James*, 408 U.S. 169, 181 (1972) (denial of access to bulletin boards and school newspapers are significant barriers to student organization’s associational rights).

¹⁵ *See id.*

¹⁶ *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Discussion of political and governmental affairs is undoubtedly “core political speech” at the very heart of freedom of expression, where protection should be “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)).