

October 30, 2024

William Ruud
Office of the President
Shippensburg University of Pennsylvania
1871 Old Main Drive
Shippensburg, PA 17257

URGENT

Sent via Next-Day Delivery and Electronic Mail (president@ship.edu)

Dear President Ruud:

FIRE¹ and the ACLU of Pennsylvania² have received multiple complaints that Pennsylvania colleges and universities are violating their constitutional obligations by restricting students' ability to engage in election-related expressive activities on campus. In this final week before Election Day, college and university leadership must ensure all campus administrators understand students' rights to engage in canvassing, voter awareness, and other political activities.

As you know, public colleges and universities are bound by the First Amendment,³ and their actions and decisions must comply with the First Amendment's requirements, including protecting the "right to participate in the public debate through political expression and political association."⁴ It should surprise no one that political expression during an election season "occupies the core of the protection afforded by the First Amendment."⁵

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America's college and university campuses. You can learn more about our mission and activities at thefire.org.

² The ACLU of Pennsylvania is a state affiliate of the American Civil Liberties Union. The ACLU and its state affiliates have a long history of successfully litigating First Amendment freedom of expression cases.

³ *Healy v. James*, 408 U.S. 169, 192–93 (1972).

⁴ *McCutcheon v. Fed. Elec. Comm'n*, 572 U.S. 185, 203 (2014); *see also Williams v. Rhodes*, 393 U.S. 23, 29 (1968) (state's authority to regulate elections may not be exercised so as to violate other provisions of the Constitution).

⁵ *McIntyre v. Ohio Elecs. Comm'n*, 514 U.S. 334, 346–47 (1995); *Meyer v. Grant*, 486 U.S. 414, 425 (1988); *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (the First Amendment "has its fullest and most urgent application to speech uttered during a campaign for political office").

The First Amendment unambiguously applies to election-related activities such as registering voters and canvassing.⁶ In fact, these in-person voter engagement activities are precisely the type of interactive, one-on-one communication that characterizes the “core political speech” characteristic of our liberal democracy.⁷

Restrictions on these activities are therefore highly suspect under First Amendment law and must satisfy strict scrutiny to be legally valid.⁸ That is, such restrictions are “presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.”⁹

Colleges and universities may establish and enforce reasonable restrictions on the time, place, and manner of expressive activities, including election-related expressive activities. But institutions may not impose restrictions *only* when the interactions concern elections and voting. Time, place, and manner rules must be content- and viewpoint-neutral—that is, indifferent to topic, viewpoint, or subject matter—as well as narrowly tailored to serve a significant government interest, leave open ample alternative channels for communication,¹⁰ and—perhaps most importantly—not selectively enforced based on the content of the speech.¹¹ The First Amendment requires no less.

⁶ *Buckley v. Am. Constitutional Law Found.*, 525 U.S. 182 (1999) (circulating petition for ballot initiative); *McIntyre*, 514 U.S. at 346–47 (leafletting for controversial referendum); *Meyer*, 486 U.S. at 425 (circulating petition for ballot initiative); *Wilmoth v. Sec’y of N.J.*, 731 F. Appx. 97, 103 (3d Cir. 2018) (circulating nomination petition); *Project Vote v. Kelly*, 805 F.Supp.2d 152, 174 (W.D. Pa. 2011) (voter registration); *La Union del Pueblo Entero v. Abbott*, --- F.Supp.3d ---, 2024 WL 4337515, at *26 (W.D. Tex. Sept. 28, 2024) (canvassing, voter advocacy); *Am. Ass’n of People with Disabilities v. Herrera*, 690 F.Supp.2d 1183, 1200 (D.N.M. 2010) (voter registration); *League of Women Voters v. Cobb*, 447 F.Supp.2d 1314, 1334–39 (S.D. Fla. 2006) (voter registration); *Project Vote v. Blackwell*, 455 F.Supp.2d 694, 700 (N.D. Oh. 2006) (voter registration); *James v. Nelson*, 349 F.Supp. 1061 (N.D. Ill. 1972) (door-to-door canvassing in student dormitories).

⁷ *Mazo v. Sec’y of State*, 54 F.4th 124, 143 (3d Cir. 2022) (defining core political speech as interactive, one-on-one communication regarding political change); *La Union del Pueblo Entero*, 2024 WL 4337515, at *27–28 (distinguishing regulations directed at core political speech, which are subject to strict scrutiny, from regulations directed at the “mechanics of the electoral process,” which are subject to lesser scrutiny).

⁸ *McIntyre*, 514 U.S. at 346; *Meyer*, 486 U.S. at 420; *Lichtenstein v. Hargett*, 83 F.4th 575, 593 (6th Cir. 2023) (collecting cases applying strict scrutiny to election laws implicating core political speech); *Mazo*, 54 F.4th at 142; *La Union del Pueblo Entero*, 2024 WL 4337515, at *27 (“Burdens on core political speech during elections, like all burdens on core political speech, are subject to strict scrutiny. And with good reason: it would defy logic to subject a content-based restriction of core political speech to lesser scrutiny because it happens to regulate speech during elections, when ‘the importance of First Amendment protections’ is at its ‘zenith.’” (internal citations omitted)).

⁹ *Reed v. Town of Gilbert*, 576 U.S. 155, 165–66 (2015) (applying strict scrutiny to a content-based restriction “regardless of the government’s benign motive, content neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech”); *Camp Hill Borough Republican Assn. v. Borough of Camp Hill*, 101 F.4th 266, 269–70 (3d Cir. 2024).

¹⁰ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); see also *Healy*, 408 U.S. at 192–93.

¹¹ *Frederick Douglass Found. v. District of Columbia*, 82 F.4th 1122, 1142 (D.C. Cir. 2023) (“Neutral regulations may reasonably limit the time, place, and manner of speech, but ... cannot be enforced based on the content or viewpoint of speech.”); *Bus. Leaders In Christ v. Univ. of Iowa*, 991 F.3d 969, 985–86 (8th Cir. 2021) (selective

Solicitation rules fail this basic First Amendment test when they are applied to restrict political canvassing and similar non-commercial activities. While some restrictions, such as registration requirements, may be reasonable in some circumstances when strictly limited to commercial solicitation,¹² courts have repeatedly held that even minor restrictions are overly burdensome when they are extended to non-commercial speech promoting a political or religious cause.¹³ In other words, even solicitation rules that are constitutional when applied to commercial speech violate the First Amendment when they are used to restrict core political speech.

Pennsylvania colleges and universities must also understand that allowing election- and campaign-related expressive activities on campus does not threaten a university's tax-exempt status and, thus, IRS rules do not provide a defensible basis for limiting students' political expression. While an institution's status as a government agency or 501(c)(3) organization prohibits the college or university *itself* from participating or intervening in a political campaign,¹⁴ students' expressive activities are not imputed to the institution, even when students use university facilities and resources.¹⁵ The IRS also clearly distinguishes "individual political campaign activities of students" from that of the institution: "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."¹⁶

enforcement of facially neutral non-discrimination policy against student group based on its religious views violated its free speech rights).

¹² *Watchtower Bible and Tract Society of N.Y., v. Village of Stratton*, 536 U.S. 150, 162 (2002) (recognizing the state's legitimate interests in regulating commercial solicitation); *Camp Hill Borough Republican Assn.*, 101 F.4th at 270 (noting that government has historically had greater leeway to regulate commercial speech than non-commercial speech). *But see Am. Future Sys., Inc. v. Penn. State Univ.*, 688 F.2d 907 (3d Cir. 1982) (university restrictions on commercial solicitation in student dormitories violated the First Amendment)

¹³ *See, e.g., Watchtower*, 536 U.S. at 165–65 ("It is offensive—not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so."); *Service Emps. Int'l Union, Local 3 v. Municipality of Mt. Lebanon*, 446 F.3d 419, (3d Cir. 2006) (registration requirement for political canvassers violates the First Amendment because it "extends to the core First Amendment areas of religious and political discourse," severely burdens spontaneous speech and anonymous advocacy, and is not tailored to support the government's legitimate interests in preventing crime and fraud); *James*, 349 F.Supp. at 1063 (virtual ban on door-to-door canvassing in student dormitories was unconstitutional despite the availability of alternative means of communication, such as meetings, distribution of literature, and personal contacts in public areas of dormitories and campus).

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

¹⁵ *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000) (expressive activities of student organizations at public universities, funded by mandatory student activity fees, are not speech by the institution); *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 841 (1995) (student religious publication funded by student fees was not speech on behalf of the university where the student fee program was viewpoint neutral); *Widmar v. Vincent*, 454 U.S. 263, 274 (1981) (religious student group's use of university facilities on the same basis available to other student groups did not imply the university's endorsement of the group's views).

¹⁶ Judith E. Kindell & John Francis Reilly, *Election Year Issues*, Exempt Organizations Continuing Professional Education Technical Instruction Program for Fiscal Year 2002, 365, 377 (2002), <http://www.irs.gov/pub/irs-tege/eotopici02.pdf> [<https://perma.cc/BEM3-ASAC>] ("The actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and

In practice, that means colleges and universities must welcome and protect political expression and activities on campus,¹⁷ subject to no more than the reasonable time, place, and manner rules that apply to all expressive activities.¹⁸ Institutions may not relegate political expression to “free-speech zones” in low-traffic areas,¹⁹ restrict political canvassing under more stringent solicitation policies,²⁰ bar outside organizations and speakers from common areas of campus,²¹ or consider student organizations’ partisan or non-partisan views when providing funding or access to campus facilities.²²

Public institutions violate the Constitution when they prohibit students from engaging in First Amendment-protected core political speech, including direct engagement with voters before an election, on campus. This is neither lawful nor acceptable. With just a week left before the election, state institutions must act immediately to ensure all administrators understand the institution’s First Amendment obligations to protect students’ election-related political expression on campus.

You must ensure your institution’s administrators understand students’ rights and will not prevent students from engaging in core political speech related to the 2024 election on campus. We would be happy to consult with your organization, free of charge, if you have any questions about how to implement these principles.

Respectfully,



Witold Walczak
Legal Director
ACLU of Pennsylvania



Jessie Appleby
Program Officer, Campus Rights Advocacy
FIRE

with authorization from” university officials.); I.R.S. Rev. Rul. 72-513, 1972-2 C.B. 246 (holding that a student newspaper’s endorsement of a political candidate did not endanger an educational institution’s tax-exempt status even though the newspaper received funding and resources from the institution).

¹⁷ *Healy*, 408 U.S. at 192–93.

¹⁸ For example, if the institution requires a reservation for tabling in a common area 24 hours in advance, the same 24-hour advance reservation requirement applies to those tabling to engage students about the election or voting.

¹⁹ *Justice For All v. Faulkner*, 410 F.3d 760, 769 (5th Cir. 2012); *Univ. of Cincinnati Ch. of Young Ams. for Liberty v. Williams*, No. 1:12-cv-155, 2012 WL 2160969, at *5–6 (S.D. Ohio June 12, 2012).

²⁰ *James*, 349 F.Supp. at 1063 (virtual ban on door-to-door canvassing in student dormitories was unconstitutional despite the availability of alternative means of communication, such as meetings, distribution of literature, and personal contacts in public areas of dormitories and campus); *Am. Future Sys., Inc.*, 688 F.2d at 913 (university restrictions on commercial solicitation in student dormitories violated the First Amendment); *cf.*, *Camp Hill Borough Republican Ass’n*, 101 F.4th. at 270 (regulation that distinguishes between commercial and non-commercial speech is content-based and subject to strict scrutiny).

²¹ *Smith v. Tarrant Cnty. Coll. Dist.*, 694 F.Supp.2d 610, 635 (N.D. Tex. 2010).

²² *Southworth*, 529 U.S. at 229.