

Hearing on Protecting the Free Exchange of Ideas on College Campuses

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Student, Princeton University and founding member of the Princeton Open Campus Coalition

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Hearing on Protecting the Free Exchange of Ideas on College Campuses

U.S. House of Representatives,
Committee on Ways and Means,
Washington, D.C.

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.

*Chairman Roskam. The subcommittee will come to order. Welcome to the Ways and Means Subcommittee on Overnight, 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 got 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 witness. 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's 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 information follows: [The Honorable Peter Roskam](#)]

*Chairman Roskam. Along the way, we hope this educational environment will help students build character, hone their values, 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 got to be exposed to a wide variety of competing ideas. And some of these ideas might be uncomfortable, unpopular, 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 got 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.

*Chairman Roskam. 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, 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. Second reason is we have got 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's 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, 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 Law School.

The subcommittee has already received your written testimony. You will each be recognized for five 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 five minutes.

STATEMENT OF ALEXANDER ATKINS, LAW STUDENT AT 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's 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's campaign, and encourage our peers to participate in the election. But rather than achieving these objectives, our group has spent nearly six 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 campus-wide email that recognized increased political engagement surrounding the 2016 election, and explained that Georgetown Law is a tax-exempt organization, 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 six months that we have lost, six 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.

*Chairman Roskam. Thank you, Mr. Atkins.

Ms. Sevchenko?

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

*Ms. Sevchenko. 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 non-profit, 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 vindicate 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 Constitutions 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.

*Chairman Roskam. Thank you.

Mr. Zuckerman?

STATEMENT OF JOSHUA ZUCKERMAN, SENIOR AT 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 non-partisan 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 judgements. 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 unit all Americans in defense of our universities, our principles, and our future. Thank you.

*Chairman Roskam. Thank you, Mr. Zuckerman.

Professor George?

STATEMENT OF ROBERT P. GEORGE, MCCORMICK PROFESSOR OF
JURISPRUDENCE AT 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, benefitting 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 Neibuhr, 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's Souls of Black Folks, Gramsci's Prison Notebooks, Strauss's 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.

*Chairman Roskam. Thank you.

Professor Hill?

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

*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 kind of sort of maybe sort of acting 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 non-precedential, 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.

*Chairman Roskam. Thank you, Professor. For the benefit of those who are watching and participating today, we have got 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: campus.speech@mail.house.gov. So if you are a student or a faculty member or an administrator, and you have got 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 five minutes.

*Mr. Meehan. Thank you, Mr. Chairman, and thanks, our distinguished panel, for your various perspectives. And 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. Sevchenko, 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. Yes. What -- yes. What you have just cited is a Supreme Court case.

*Mr. Meehan. Yes, I did.

*Ms. Sevchenko. 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. Sevchenko. 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 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 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.]

*Ms. Hill. 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 non-violent 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) [sic] 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. Sevchenko, I want to get you to clarify a few things. Most private schools are tax-exempt under 501(c)(3), correct?

*Ms. Sevchenko. I believe so, yes.

*Mr. Holding. The -- are there any public colleges that are exempt under 501(c)(3)?

*Ms. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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 towards, you know, their marketing and so forth, as you mentioned.

*Ms. Sevchenko. 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. Sevchenko. 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. Sevchenko. 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. Sevchenko. -- "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 beliefs, 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 information follows: [The Honorable Joseph Crowley](#)]

*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 quite publicized 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 of a Washington Post article that showed some statements that was during that whole process of basically muzzling freedom of speech. And we are talking about a public institution, not a private, like Georgetown. But University of Missouri is a public. 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. So I understand that there is different mechanisms between a private university, but I am talking about a real problem that has faced a public. 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.]

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

*Ms. Sevchenko. 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 get 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 and 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. Sevchenko. 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. Sevchenko. 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 information follows: [The Honorable Danny Davis](#)]

*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 worshiped 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. 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, are 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 got 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 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 six 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 from 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's 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. So 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. You going to get that back? You going to be able to advocate for Mr. Sanders, go back in time? Is 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, and 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 his -- 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 directly 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 any more? 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 be -- 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.

*Mr. Kelly. So, Mr. Atkins, you 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. So I think that there is an unfortunate kind of American cliché that has arisen that, you know, that 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 at the panel, thanks so much.

Professor George, good to see you. But I -- when you said that about Judge Hand, that sparked that 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 have just got a couple 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 got, in the House of Representatives -- it is rough and tumble and sharp-elbowed and all that sort of stuff, but we have got in the House of Representatives, by rules, those sorts of things, Mr. Zuckerman, that you are trying to create, and 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 got 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-averse. 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 -- and 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. 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's 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 is, 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. So some of the demands that have been made at Princeton would basically institutionalize this political correctness. So 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 got 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 got 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 our 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, campus.speech@mail.house.gov.

And with that, we are adjourned.

[Whereupon, at 11:42 a.m., the subcommittee was adjourned.]

[Public Submissions for the Record](#)