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January 12, 2005

Via Federal Express

Jeff S. Jordan, Supervisory Attorney
Complaints Examination and Legal Administration
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2005 JAN 13 P 12:52


In Re: MUR 5550 - Respondent: The Pennsylvania State University

Dear Mr. Jordan:

Enclosed herewith please find the response of The Pennsylvania State University ("Penn State") to a complaint filed with the Commission by David T. Hardy, Esq. The undersigned legal counsel and this law firm have been designated by Penn State to respond on its behalf (See previously filed Statement of Designation of Counsel).

Very truly yours,

McQUAIDE BLASKO

BY 
Allen P. Neely

Enclosures

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC

State College Office John W. Blasko, Thomas E. Schwartz, R. Mark Faulkner, David M. Weixel, Steven S. Hurvitz, James M. Horne, Wendell V. Courtney, Darryl R. Shmak, Mark Richter, Daniel E. Bright, Paul J. Tomczuk, Janine C. Gismondi, John A. Snyder, April C. Simpson, Allen P. Neely, Pamela A. Ruest, Katherine V. Oliver, Katherine M. Allen, Wayne L. Mowery, Jr., Chena L. Glenn-Hart, Livinia N. Jones, Cristin R. Long, Matthew T. Rogers, Frederick R. Battaglia, Anthony A. Simon, Russell A. Ventura

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FEDERAL ELECTION COMMISSION

In the Matter Of:

David T. Hardy

MUR 5550

2005 JAN 13 P 12:55

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RESPONSE OF RESPONDENT,
THE PENNSYLVANIA STATE UNIVERSITY

David T. Hardy, Esq. has filed a complaint with the Federal Election Commission ("FEC" or "Commission"), alleging violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Mr. Hardy's complaint is based upon a speaking appearance by filmmaker and author, Michael Moore, at Penn State's University Park Campus on October 22, 2004. Mr. Hardy has raised similar allegations against Syracuse University, Central Michigan University, the University of Michigan, Dickinson College, the University of Wisconsin at Green Bay, the University of Arizona, Utah Valley State, the University of Florida, California State University at San Marcos, Wayne State University, Michigan State University, the University of Cincinnati, Lehigh University, and Northwest Missouri State University.

I. PRELIMINARY STATEMENT

The Respondent respectfully submits that there is no reason to believe that The Pennsylvania State University has committed a violation of FECA.

Michael Moore is a nationally known author and filmmaker who won an Academy Award for best documentary in 2002, and a People's Choice Award in 2005. He is precisely the sort of individual who regularly speaks on college campuses across this nation. During the recent presidential campaign, he gained national notoriety and become something of a controversial figure, as illustrated by these very proceedings. As detailed below, Penn State regularly hosts speakers on all manner of topics and from across the political spectrum. In this regard, Mr. Moore's appearance at Penn State was consistent with one of the primary missions of an institution of higher education: to encourage the dissemination of a wide range of viewpoints in order to promote learning and debate.

Mr. Moore's appearance at Penn State cannot possibly be construed as a violation of FECA. Mr. Moore was not a candidate nor a representative of a political committee. See 2 U.S.C. §431(2); 11 C.F.R. §100.3, 100.4. There can be no violation of FECA without some showing of an intent to influence a federal election. See 2 U.S.C. §441(b); 11 C.F.R. §100.110. Penn State had no such intent. No corporate funds were used for this event. Mr. Moore's appearance was requested and facilitated by a student group and was funded by student activity fees. The Internal Revenue Service has ruled that the political activities of students cannot

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jeopardize the tax exempt status of a college. See Revenue Rulings 72-512 and 72-513, attached hereto as Exhibit "A". This principle is directly analogous.

Congress never intended that federal election laws be utilized in a case such as this. Any effort by the Commission to regulate programming choices made by college students would carry serious First Amendment implications.

II. ALLEGATIONS / ISSUES PRESENTED

The Commission's regulations require a complaint to provide a "clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 C.F.R. §111.4(d)(3). If a complaint does not comply with this requirement and with the other requirements of section 111.4, "no action shall be taken on the basis of that complaint." 11 C.F.R. §111.5(b). Mr. Hardy's complaint fails to meet even these basic requirements, and should therefore be dismissed.

The Commission has provided Penn State with two letters from Mr. Hardy which apparently are intended to constitute an official FEC complaint. Both are inartfully drafted, vague, and bereft of proffered evidence which would be sufficient to support any sort of FECA violation against Penn State. Allegations against numerous other educational institutions are intermingled with a few references to Penn State.

The first letter is dated September 24, 2004, and contains only one passing reference to Penn State. Mr. Hardy avers that Michael Moore was engaged in a campus speaking tour for the purpose of conducting "stump speeches" in support of the presidential campaign of Senator John Kerry. Penn State is mentioned as one of a number of universities where Mr. Moore was scheduled to speak. Mr. Hardy contends that any financial support for Mr. Moore's appearances constituted a prohibited corporate "expenditure," per 2 U.S.C. §441b.

Mr. Moore's second letter of complaint is dated November 8, 2004. This consists of a series of excerpts from various news sources documenting Mr. Moore's appearances. An article from the *Daily Collegian*, Penn State's student newspaper, is selectively quoted and included in Mr. Hardy's letter:

University Park Allocation Committee (UPAC) chairman Tom Truong said the College Democrats were allocated about \$23,000 for Moore's visit to Penn State, \$15,000 of which will go toward Moore's speaking fee. Green said the total cost of Moore's visit was about \$30,000, and added that about \$4,000 has been raised through private donations and about \$1,000 has come from Kerry-Edwards item donations....Green said Centre County Democrats have kept an envelope in their office asking for donations for the event. "People see the envelope and give money," Green said....Originally, Moore was scheduled to speak at Eisenhower Auditorium, but Moore and the College Democrats decided the center would be a better venue because it could accommodate more people, Green said.

(See David Hardy letter dated November 8, 2004, *quoting* from November 1, 2004 edition of *Daily Collegian*, a copy of which is attached hereto as Exhibit "B," in its entirety).

Mr. Hardy neglected to include the following passage:

College Republicans chairman Andy Banducci said the College Republicans would have a presence at Moore's speech.

"We'll be handing out literature about the president and letting people know not to believe everything Michael Moore says," Banducci said.

Banducci said the College Republicans are on the road to getting Republican speakers to come to Penn State.

"With the proliferation of left-wing speakers, it's something we have to look in to," he said.

Id. This additional passage illustrates the fact that Mr. Moore's appearance did indeed further the University's legitimate objective of promoting the free exchange of ideas and sparking debate on campus. As discussed below, many speakers who could not be described as "left-wing" have spoken at Penn State in recent years.

III. THE PENNSYLVANIA STATE UNIVERSITY

The Pennsylvania State University is the Commonwealth of Pennsylvania's designated land-grant institution and the largest public university in the Commonwealth. Penn State was created by an Act of the Pennsylvania General Assembly in 1855. In 1862 the United States Congress passed the Morrill Act. 7 U.S.C. §§ 301-308. This Act provided for the issuance of land script to each state, which could be sold, and the proceeds used to endow, support, and maintain "at least one college where the leading object shall be, without excluding other scientific and classical studies, including military tactics, to teach the branches of learning as are related to agriculture and the mechanical arts, in such a manner as the legislature of the states may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life." 7 U.S.C. § 304. The Morrill Act required each state that accepted its provisions to express its assent by legislative act.

In 1863, Pennsylvania accepted the provisions of the Morrill Act, and pledged the faith of the State to carry its terms into effect. The University's designation as the land-grant institution of the Commonwealth was the foundation for the development of Penn State into one of the largest public institutions of higher education in the country. Penn State's primary mission is teaching, research and public service. Penn State has been classified as a state-related institution and instrumentality of the Commonwealth of Pennsylvania.

As an instrumentality of the Commonwealth, Penn State is qualified to receive tax exempt contributions. Contributions to Penn State are deductible for federal income tax

purposes by virtue of Internal Revenue Code 170(c) and 170(b)(1)(A)(ii), and the applicable regulations hereunder. This point has been confirmed by the United States Treasury Department. The tax status of Penn State is relevant to IRS rulings on matters of student political activities, a subject which is addressed herein.

IV. RELEVANT FACTS

A. Mr. Moore's Appearance and the Funding of Student-Sponsored Events

Mr. Moore was not invited by Penn State, nor by any agents or employees of Penn State. The event was initiated and sponsored by Penn State College Democrats, a recognized student group. The event was funded through student activity fees, and not from Penn State's general fund. No corporate monies were used for this event. The means by which Mr. Moore's appearance at Penn State came about and was funded are addressed in the Affidavits of Stanley E. Latta, D.Ed., (Penn State's Director of Unions and Students Activities) and Robert G. Howard (General Manager of Penn State's Bryce Jordan Center). (See Exhibits "C" and "D").

Each semester, students pay an activity fee, the proceeds of which go to fund a wide variety of student recreational and educational activities. A portion of these funds is disbursed by the University Park Allocation Committee ("UPAC"). UPAC is comprised of and directed by Penn State students. For the Fall 2004 semester, UPAC's total programming budget was \$937,583.14. This amount came entirely from student activity fees. The Committee also received \$215,000 from Penn State's general fund. The general fund contribution was allocated to cover operational expenses, including staff salaries, office supplies, technical support costs, etc. No general fund monies are allocated directly toward programming.

Funding allocation decisions are made by a UPAC subcommittee known as the Programming Allocation Team ("PAT"), which consists of nine student-members. Requests for event funding are submitted by students to the PAT, which has sole responsibility for making funding decisions. In recent years, UPAC-funded events have included concerts and music festivals, dances, movie screenings, student blood drives, HIV awareness programs, academic seminars, ethnic festivals, and the homecoming parade. UPAC has also funded appearances by speakers on a vast array of topics, including Michael Moore and political commentators from across the spectrum.

Mr. Moore's appearance was funded through the standard processes outlined above. In May 2004, the Penn State College Democrats, a recognized student organization, submitted a request to UPAC for funding. Attached hereto as Exhibit "E" is the funding request form submitted by the College Democrats, dated May 17, 2004. The "Description of event" reads as follows: "Michael Moore will give a speech on liberalism in the U.S. post 9/11." The College Democrats later submitted a supplemental funding request after unanticipated costs arose. The total amount requested for this event was \$26,378.00. The PAT decided to fund the event, although not for the full amount. The total amount ultimately allocated by UPAC was

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\$23,396.00. The Penn State College Democrats raised additional funds for the event. Penn State took no part in soliciting any additional funds from outside sources.

Penn State did not engage in any advertising or promotion of Mr. Moore's appearance, other than the standard practice of issuing a press release and listing the event on various schedules of events and on a marquee. No funds were expended for promotional purposes.

The only advertising of which Penn State is aware is an advertisement placed in the *Daily Collegian*, a copy of which is attached hereto as Exhibit "F". The advertisement, which was sponsored by a local attorney, reads: "Attorney Andrew Shubin proudly joins the Penn State College Democrats in welcoming Award Winning Filmmaker Michael Moore" There is no indication in this advertisement that Penn State sponsored or endorsed the event. Indeed, Penn State did not sponsor or endorse this event, and no Penn State officials appeared on stage at the time of Mr. Moore's appearance.

Penn State's UPAC program funds a vast array of speakers from across the political spectrum. The College Democrats received funding for Mr. Moore's appearance and have sponsored other UPAC-funded events in the past. Conservative student groups have likewise received UPAC funding. By way of example, between 2002 and 2004 a student group named Young Americans for Freedom requested and was granted \$78,768.44 in UPAC proceeds to fund appearances by a number of speakers, including conservative authors Bernie Goldberg, Michelle Malkin and Ann Coulter; John Stossel (of ABC News), and Walter Williams (George Mason University professor and occasional guest host for Rush Limbaugh). The Penn State College Republicans made four requests for funding between 2001 and 2004, all of which were granted. A total of \$23,053.18 was allocated for such speakers as conservative columnists David Horowitz, Jonah Goldberg and Peter Beinart.

In addition to the UPAC program, Penn State regularly hosts speakers whose appearances are facilitated and/or funded through other means. On October 22, 2004, the night of Mr. Moore's appearance, Michael Gallagher, a nationally syndicated conservative talk radio host, also gave a speech on campus. The Young Americans for Freedom invited Mr. Gallagher to campus for the purpose of countering Mr. Moore's appearance. No funding was requested for this event.

On October 29, 2004, President George H.W. Bush appeared on campus at the request of the Penn State College Republicans. No funding was requested for this event.

Each year, Penn State's Distinguished Speakers Series offers a diverse program of nationally and internationally known individuals. This program also receives funds from student activity fees. Speaker selections are made by a student committee. In recent years, the Distinguished Speakers Series has presented, among others: Robert Novak, Howard Dean, Charleton Heston, William F. Buckley, John Walsh, Christopher Reeve, Janet Reno, Ben Stein, Elie Wiesel, Hank Aaron, Jeanne Kirkpatrick, Bob Woodward, Jesse Ventura, William Schultz, Gloria Steinem, and Ervin "Magic" Johnson. All programming decisions of student programming boards are made solely by students and without interference from the administration of Penn State.

B. October 22, 2004 Appearances by Michael Moore and Michael Gallagher

Mr. Moore's appearance on campus generated a substantial amount of attention, and indeed controversy. Michael Gallagher, a nationally syndicated conservative talk radio host, was invited to come to Penn State by the Young Americans for Freedom and the Penn State College Republicans. (See, October 25, 2004 article from the *Daily Collegian*, Penn State's student newspaper, attached hereto as Exhibit "G"). Mr. Gallagher accepted this invitation and timed his appearance to coincide with Mr. Moore's. Mr. Gallagher appeared at Penn State's University Park campus on the evening of October 22, 2004. As described in the student newspaper, Mr. Gallagher was greeted by a "packed audience ... in 100 Thomas building, practically in the backyard of his political opposite's visit to the Bryce Jordan Center."

No request for funding was made for this event. Mr. Gallagher used this event to raise \$61,000 to fund a non-profit charity organization that supports American military personnel and their families. Mr. Gallagher also used the occasion to debut the film *Fahrenheit 9/11*.

In his complaint letter, Mr. Hardy makes reference to his personal website (www.mooreexposed.com), which is devoted to countering Mr. Moore's political positions. On that website is a link to another site (www.fahrenheit911), which advertises for sale a film entitled *Fahrenheit 9/11*, that is billed as "Unraveling the truth about Fahrenheit 9/11 and Michael Moore." *Fahrenheit 9/11* is a rebuttal of Mr. Moore's film, *Fahrenheit 9/11*. Within the *Fahrenheit911.com* website is a list of persons who are featured in the film, including the complainant in this matter, Mr. Hardy.

While Mr. Moore's appearance was taking place across campus, not only was another speaker expressing a diametrically opposed political viewpoint at another campus location, but the complainant in this case himself, Mr. Hardy, appeared in a film and gave his own personal rebuttal of Mr. Moore's positions. This ironic twist serves to dramatically underscore the fact that Penn State does not merely pay lip service to the idea of promoting the free expression of ideas and opinions. On October 22, 2004, the Penn State community truly witnessed freedom of expression in action. Mr. Hardy has expressed his concern that by permitting Mr. Moore to appear on campus, Penn State was somehow supporting the Kerry campaign. In fact, Penn State students and the local community were given the opportunity to hear from both sides, including Mr. Hardy's own personal opinion. As stated by Elizabeth Riva, a Penn State student who attended the Gallagher event: "I've heard one side through Michael Moore's perspective, and I wanted to hear the Republican view, and see Moore challenged for once." (See *Daily Collegian* article, at Exhibit "G"). Mr. Hardy himself contributed to this important First Amendment process.

Penn State's position on the events of October 22nd was expressed in an op-ed piece written by Dr. Vicky Triponey, Vice President for Student Affairs. This letter, which is attached hereto as Exhibit "H," was published in Penn State's on-line newsletter, *Newswire*, just before the Moore and Gallagher events. Dr. Triponey observed that the controversy and debate stirred by these opposing appearances represented true democracy in action and a positive educational opportunity. Several excerpts from Dr. Triponey's article are set forth below:

Fortunately we live in a country that values free speech -- everyone's free speech -
- and we have a Constitution that protects the right of Penn State students to
invite a broad range of speakers to campus. Thus we believe both Moore and
Gallagher can and should visit campus.

The clear winners in this mini-drama over Constitutional rights are Penn State
students. As we approach election day in this important, hotly contested national
election Penn State students will have the opportunity to hear advocates on both
sides advancing their perspectives.

We know in this case both speakers have agendas. Both speakers are using Penn
State's national visibility to advance their own ideas; both claim to be patriots
who love their country, albeit in very different ways; both maintain Web sites
where you can buy their products and their point of view; and both profit
financially from their work.

What is most important at Penn State is that both speakers -- one strongly against
President Bush and one strongly for President Bush -- have a right to speak. This
is the promise of the First Amendment of our Constitution. The right to disagree
is the foundation of our government.

Some people support and defend the First Amendment. Others say they support
the First Amendment, but only when it protects their own cause and not a cause
with which they disagree. At Penn State, we embrace the First Amendment -- in
principle and in practice.

* * *

A good university is not threatened by a conservative speaker, and it is not
threatened by a liberal speaker. Penn State is a great University; supporting our
students in their freedom to present and hear divergent points of view.

* * *

We have a thoughtful process on campus where student groups can propose
speakers and request funding from a student committee that allocates a budget
generated from a student activity fee. Some students choose not to attend the
plays, movies or activities supported by their fees. Sometimes funds are allocated
for speakers who draw a small audience and other times, groups raise their own
funds from other sources, such as private donations and fund raisers.

The important principle at Penn State is that students are making these decisions
regarding who to invite. And overall they seem to have a sense of balance and
fairness in their funding decisions.

In the end our students are better off, better served and better educated when they
can listen to both sides of important debates. That is something students at some

schools will not get to do this fall. In those cases, free speech has been attacked and successfully stifled.

At Penn State, we welcome Michael Gallagher and Michael Moore. We are glad Theresa Heinz Kerry and Michelle Malkin were here earlier this fall. We look forward to Bernard Goldberg and Howard Dean's visits in the coming weeks, and we have extended invitations to both presidential candidates to visit and talk with our students.

We applaud our students for inviting these speakers, for exercising their right to free speech, and for learning about the issues that affect their world. And we encourage them to vote on Nov. 2.

This is American democracy in action at Penn State.

(For full text, *see* Exhibit "H").

Dr. Triponey was prescient in her remarks about certain persons supporting freedom of expression only for those of like mind. Mr. Hardy has not complained about Penn State's permitting Mr. Gallagher to voice a pro-President Bush message on campus and to screen the film in which Mr. Hardy himself appears.

IV. ARGUMENT

The Complaint is completely devoid of merit and should be dismissed without further investigation. Complainant's position is belied by the very sections of the Act upon which he relies, as well as related administrative regulations and rulings and opinions of the Commission. Also relevant to this analysis are Revenue Rulings from the Internal Revenue Service, which address political activities of students. It is clear that Congress never intended for campaign finance legislation to interfere with college students' choices of speakers on campus. Furthermore, regulation of this matter by the Commission would create critical First Amendment implications.

A. **The Michael Moore Event Did Not Constitute a Violation of Any Provisions of the Act**

1. *Relevant Provisions of FECA*

Penn State did not violate any provisions of FECA. Complainant relies upon 2 U.S.C. §441b, the relevant portions of which are reproduced below:

Contributions or expenditures by national banks, corporations, or labor organizations.

(a) **It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office ... or for any corporation, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors ...are to be voted for, or in connection with any primary election**

(b)(2) For purposes of this section ...the term "contribution or expenditure" includes a contribution or expenditure, as those terms are defined in section 431 of this title, and also includes any direct or indirect payment, distribution, advance, deposit, or gift of money, or any services, or anything of value ... **to any candidate, campaign committee, or political party or organization, in connection with any election....**

2 U.S.C. §441b(a), (b)(2) (*emphasis added*).

In the definition section, FECA defines "expenditure" to include ... "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person **for the purpose of influencing any election** for Federal office." 2 U.S.C. §(9)(A)(i). The same definition is contained within the Code of Federal Regulations at 11 C.F.R. §100.111(a).

Under these definitions, a prohibited "expenditure" must have two elements. The expenditure must be made "in connection with" and "for the purpose of influencing" an election. The expenditure must also be made to a "candidate, campaign committee, or political party or organization." Appearance fees made to Mr. Moore with student funds do not meet either of these conditions.

Mr. Moore was not a "candidate, campaign committee, or political party or organization." 2 U.S.C. §441b(b)(2). Therefore, any payment to Mr. Moore cannot constitute an "expenditure." Mr. Hardy has not argued that Mr. Moore was an official agent or member of the Kerry campaign or committee. Mr. Moore is a private individual. FECA does not regulate or restrict expressions of opinion by private individuals, even though they may be public figures like Mr. Moore.

Furthermore, payments made to Mr. Moore were not made "in connection with" or "for the purpose of influencing" the 2004 presidential election. As outlined in section IV above, Mr. Moore was brought to Penn State by University students, not by the University administration. The funding request came from a student group. The funding allocation decision was made by a student group. The funds were provided by students. Under these circumstances, there can be no finding of institutional intent on behalf of Penn State.

Attached hereto as Exhibit "H," and excerpted above, is an op-ed piece written by Dr. Vicky Triponey, Vice President for Student Affairs at Penn State. This article was written before the University's receipt of Mr. Hardy's complaint. Dr. Triponey eloquently expressed Penn State's position on the subject of Mr. Moore's appearance. Penn State did not endorse Mr. Moore's message, nor that of Mr. Gallagher. However, Penn State does seek to create a climate in which students have an opportunity to hear from people of every political stripe. Penn State has established and supports a system whereby Penn State students are freely permitted to choose the speakers who appear on campus.

Any attempt at assigning some sort of institutional or corporate intent is further belied by the range of speakers who have appeared at Penn State in recent years. If indeed Penn State was purposely attempting to influence the presidential election in favor of the Democratic candidate, then why would Penn State also play host to a large number of conservative speakers, including the President's own father? The actions of Penn State unambiguously prove that the University did not make any expenditures "in connection with" or "for the purpose of influencing" the 2004 presidential election.

Section 114.2 of the Code of Federal Regulations, which is cited by the Complainant, sets forth a prohibition on corporate expenditures that differs slightly from that contained within the Act. This section prohibits corporations from making expenditures, as defined at 11 C.F.R. §114(a). Section 114(a) recites the same definition of "expenditure" as is found at 2 U.S.C. §441b(b)(2), which contains the "in connection with" language. Because there was no "expenditure" in this case, the Section 114(a) prohibition of communications "expressly advocating the election or defeat" of a candidate is likewise inapplicable.

In addition, it is obvious that the constraints on advocacy set forth at 11 C.F.R. §114(a) are intended to apply to communications by a corporation. Penn State has not advocated the election or defeat of any candidate. Any statements that Mr. Moore may have made in support of Senator Kerry, or against President Bush, were expressions of his own personal opinion. Likewise, any statements in support of the President made by Mr. Gallagher on the same evening were expressions of his own personal opinion. Furthermore, any opinions expressed by Mr. Hardy in the film *Fahrenheit 9/11* were, once again, Mr. Hardy's personal opinions. Penn State did not make any communications of any nature on the subject of the presidential election.

2. *Treatment of Student Political Activity by the Internal Revenue Service*

The Internal Revenue Service has issued two Revenue Rulings that are directly on point, and which emphasize that the political actions of university students do not implicate the university. See Rev. Rul. 72-512 and 72-513, *attached hereto* as Exhibit "A." The federal tax code exempts from taxation a number of non-profit organizations, including those founded for educational purposes. 26 U.S.C. § 501(c)(3). Section 501(c)(3) expressly forbids non-profit corporations from taking part in partisan political activities. Penn State's tax treatment is addressed in section III above. Although Penn State is not a 501(c)(3) corporation, Penn State is treated as exempt for purposes of federal taxation. Therefore, a useful analogy may be drawn to IRS treatment of 501(c)(3) designated universities.

The IRS has ruled that a university's tax exempt status under section 501(c)(3) is not jeopardized by the political activities of its students. In Revenue Ruling 72-512, the IRS considered a situation where students were required, as part of a political science course, to perform between 60 and 80 hours of work for a political campaign of his or her choosing. The IRS determined that the university had not engaged in prohibited electioneering by virtue of this course requirement.

Where the extent and manner of student participation in the actual political process in such cases is reasonably germane to the course of instruction, the fact that such course is a part of the university's curriculum and that university personnel and facilities are employed in its conduct does not make the university a party to the expression or dissemination of political views of the individual students in the course of their actual campaign activities within the intendment of section 501(c)(3).

See Exhibit "A."

This ruling was cited by authors Judith E. Kindell and John Francis Reilly in an article entitled *Election Year Issues*, which is available on the official IRS website at www.irs.gov/pub/irs-tege/topici02.pdf. The authors observe that "[t]he actions of students generally are not attributed to an educational institution unless they are undertaken at the direction of and with authorization from a school official."

In Revenue Ruling 72-513, the question involved a university's provision of physical facilities and faculty advisors in connection with the operation of a student newspaper. The paper routinely published editorials containing expressions of support for political candidates. The IRS held that "the fact that the university furnishes physical facilities and faculty advisors in connection with the operation of the student newspaper does not make the expression of political views by the students in the publishing of the newspaper the acts of the university within the intendment of section 501(c)(3)" See Exhibit "A."

3. *Federal Election Commission Authority*

Penn State's position is supported not only by the text of the Act and the regulations, but also by the manner in which the FEC has applied the prohibition on corporate expenditures. The FEC has issued a number of advisory opinions, General Counsel reports, and rulings on matters involving appearances by *candidates* at various venues, including college campuses. However, the undersigned has been unable to locate any FEC authority relating to the propriety of an appearance by an author, filmmaker and/or public figure such as Michael Moore. The reason why there is no authority on this point is obvious. Expressions of opinion by private individuals are clearly not subject to federal elections laws. It would also appear that prior to Mr. Hardy's complaint, no one has had the temerity to attempt to draw such a connection. While no on point FEC precedent has been located, the Iowa and Vanderbilt matters discussed below provide an illustrative contrast to this case in that appearances by a *candidate* were at issue.

Mr. Hardy does not contend that Penn State, or any agents or employees of Penn State, "expressly advocated" the election of John Kerry or the defeat of President Bush. This precise point was made within a FEC First General Counsel's Report in the matter of MUR 5392, a case involving an appearance by General Wesley K. Clark at the University of Iowa College of Law. Therein, the General Counsel found no reason to believe that any violation of FECA had occurred when General Clark spoke at the University of Iowa College of Law after he had announced his candidacy for president. This finding was based in part upon regulations which allow a public educational institution to host "...candidates, candidates' representatives or representatives of political parties" provided that reasonable efforts are made to ensure that the event is not conducted like a campaign rally. See 11 C.F.R. §110.12(a). The provisions and requirements of 11 C.F.R. §110.12(a) are not relevant to this case for the obvious reason that Michael Moore was not a candidate, candidate's representative, or representative of a political party.

A similar question was presented in FEC Advisory Opinion 1992-6, which addressed an appearance at Vanderbilt University by then-presidential candidate, David Duke. The Commission found that the payment of an honorarium to Mr. Duke was permissible as long as he did not mention his candidacy. A candidate's appearance on campus is a far different thing than the appearance of an author and filmmaker who chooses to express a personal political opinion.

Another analogous topic that has been addressed by the FEC is the media exception, by which Congress specifically exempted press entities from coverage under FECA. See 2 U.S.C. §431(9)(B)(i). This exception is narrowly drawn, and Penn State does not contend that it applies in this case. However, the reasoning and logic behind the exemption is applicable. The Commission has found that the exception applies even in the face of allegations that a radio talk show host expressly advocated the reelection of a U.S. Senator and the defeat of his opponent, and replayed portions of the Senator's advertisements during his show. See Statement of Reasons for MURs 4929, 5006, 5090 and 5117. The FEC likewise applied the press exception in a case alleging that the Rush Limbaugh radio program constituted unpaid advertising for the Bush / Quayle campaign. See MUR 3624; see also MUR 4946 (FEC dismissed complaint

alleging that political news commentary on various television networks constituted campaign expenditures).

The media exception is required to ensure that freedom of the press is not abridged by FECA. The Commission's treatment of the media exception is therefore relevant to this analysis. As discussed below, the same First Amendment protection applies whether the forum is a radio talk show, a newspaper column, or a stage on a college campus.

B. Congress Did Not Intend that FECA Apply in the Circumstances Presented Here

A speaking appearance by a private individual on a college campus, arranged and funded by college students, is not the sort of evil that Congress sought to remedy by prohibiting corporate expenditures in support of an election. The Supreme Court of the United States has issued a number of opinions containing discussion of the history and impetus behind our federal election laws.

In 1957, Justice Frankfurter reviewed legislative history associated with turn-of-the-century campaign finance reform efforts, and observed:

Concern over the size and source of campaign funds so actively entered the presidential campaign of 1904 that it crystallized popular sentiment for federal action to purge national politics of what was conceived to be the pernicious influence of "big money" campaign contributions. A few days after the election of 1904, the defeated candidate for the presidency said: 'The greatest moral question which now confronts us is, Shall the trusts and corporations be prevented from contributing money to control or aid in controlling elections?'

United States v. Automobile Workers, 352 U.S. 567, 572, 77 S.Ct. 529, (1957).

More recently, in *FEC v. Beaumont*, 539 U.S. 146, 123 S.Ct. 2200 (2000), the Supreme Court addressed the constitutionality of the FECA ban on corporate contributions to nonprofit advocacy groups. The Court began its analysis by reviewing the history of election financing. On the subject of corporate expenditure regulation, the Court noted:

The current law grew out of a "popular feeling" in the late 19th century "that aggregated capital unduly influenced politics, an influence not stopping short of corruption." [citation omitted] A demand for congressional action gathered force in the campaign of 1904, which made a national issue of the political leverage exerted through corporate contributions, and after the election and new revelations of corporate political overreaching, President Theodore Roosevelt made banning corporate political contributions a legislative priority. [citation omitted].

* * *

In sum, our cases on campaign finance regulation represent respect for the "legislative judgment that the special characteristics of the corporate structure require particularly careful regulation." [citation omitted]. And we have understood that such deference to legislative choice is warranted particularly when Congress regulates campaign contributions, carrying as they do a plain threat to political integrity and a plain warrant to counter the appearance and reality of corruption and the misuse of corporate advantages. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 26-28, 47, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (*per curiam*). As we said in *Colorado Republican*, "limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of ... political spending are (corruption being understood not only as *quid pro quo* agreements, but also as undue influence on an officeholder's judgment, and the appearance of such influence)." *Federal Election Comm'n v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 440-441, 121 S.Ct. 2351 (2001).

Id., 539 U.S. 152-154.

None of these considerations is implicated in this case. Mr. Moore's appearance on a college campus cannot reasonably be said to raise the specter of political corruption or corporate influence peddling. FECA was never intended to apply to this sort of case, and the Complaint should be dismissed without delay.

C. **The First Amendment Protects the Activities of Penn State Students in this Case**

Should the Commission find that any provisions of FECA are applicable, further investigation or regulation is nevertheless prohibited by the First Amendment. Maintenance of an atmosphere that promotes free and unfettered expression on our nation's college campuses is a matter of obvious and time honored importance. The United States Supreme Court has frequently recognized our nation's deep commitment "to safeguarding academic freedom," and to the "robust exchange of ideas." *U.S. v. American Library Ass'n, Inc.*, 539 U.S. 194, 226, 123 S.Ct. 2297 (2003); quoting *Keyishian v. Board of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603, 87 S.Ct. 675 (1967).

The Supreme Court addressed this topic in *Board of Regents of the University of Wisconsin System v. Southworth*, 529 U.S. 217, 120 S.Ct. 1346 (2000). The *Southworth* case involved a claim by University of Wisconsin students that a mandatory student activity fee violated their First Amendment rights because these funds were used to support organizations that engaged in political and ideological expression offensive to the students' personal beliefs. Like Penn State, the University of Wisconsin is a public institution of higher learning.

Student activity fees at Wisconsin funded a wide range of student groups, including the International Socialist Organization, the College Democrats, the College Republicans, and the American Civil Liberties Union. *Id.* 529 U.S. at 223. The Supreme Court described the activities engaged in by these student as "... diverse in range and content, from displaying posters and circulating newsletters throughout the campus, to hosting campus debates and guest speakers, and to what can best be described as political lobbying." *Id.* In weighing the various competing rights at issue, the Court acknowledged that "... recognition must be given as well to the important and substantial purposes of the University, which seeks to facilitate a wide range of speech." *Id.* 529 U.S. at 231.

The Supreme Court went on to uphold Wisconsin's activity fee system, provided that allocation of funding support was carried out in a viewpoint neutral manner. As previously stated, Penn State employs a similar system by which student committees fund all manner of activities, including groups and speakers from both sides of the political divide. In explaining its ruling, the Court stated as follows:

The University may determine that its mission is well served if students have the means to engage in dynamic discussions of philosophical, religious, scientific, social, and political subjects in their extracurricular campus life outside the lecture hall. If the University reaches this conclusion, it is entitled to impose a mandatory fee to sustain an open dialogue to these ends.

Id., 529 U.S. at 232-233.

The Complainant is apparently arguing that Mr. Moore's appearance at Penn State conferred a benefit upon the Kerry campaign. As the Supreme Court has held, this assertion is irrelevant to the FEC's review of this matter. In *McConnell v. FEC*, 540 U.S. 93, 124 S.Ct. 619 (2003), the Supreme Court addressed challenges to the constitutionality of the Bipartisan Campaign Reform Act of 2002. In his dissent, Chief Justice Rehnquist took issue with the majority's decision to uphold several provisions of that act. Without reference to the FECA or the press exception, he stated:

Newspaper editorials and political talk shows *benefit* federal candidates and officeholders every bit as much as a generic voter registration drive conducted by a state party; there is little doubt that the endorsement of a major newspaper *affects* federal elections, and federal candidates and officeholders are surely "grateful," [citation omitted] for positive media coverage. I doubt, however, the Court would seriously contend that we must defer to Congress' judgment if it chose to reduce the influence of political endorsements in federal elections.

Id., 124 S.Ct. at 780 (*emphasis in original*).

In a footnote, the majority addressed the Chief Justice's concerns, expressly agreeing "...that Congress could not regulate financial contributions to political talk show hosts or

newspaper editors on the sole basis that their activities conferred a *benefit* on the candidate.” *Id.*, 124 S.Ct. at 668, n. 51. This position was based upon First Amendment principles.

The *McConnell* case did not directly involve media coverage or endorsements. The point was made by the Supreme Court to emphasize that there are limits on the extent of congressional authority. The Court was not discussing the media exception contained in FECA, but rather, the overarching constitutional framework. The point is equally applicable in this matter. Mr. Moore’s expression of political opinion is analogous to that of a newspaper editor or radio talk show host. It would be unconstitutional for the FEC to attempt to intervene in this case.

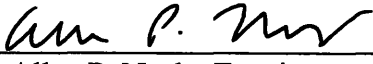
If Penn State had chosen to veto Mr. Moore’s appearance, such action may well have constituted a breach of students’ constitutional rights and a violation of the policy enunciated by the Supreme Court in *Southworth*. Had Penn State bowed to the pressure of people like Mr. Hardy, the University may well have faced a complaint filed in federal court, rather than a complaint filed with the FEC. The FEC should not, and indeed cannot, subordinate First Amendment rights in the context of its consideration of the unfounded assertion by Mr. Hardy of a FECA violation in this matter.

V. CONCLUSION

For the foregoing reasons, the Respondent, The Pennsylvania State University, respectfully submits that there is no reason to believe that a violation of FECA has been committed. It is therefore requested that this matter be dismissed in its entirety.

Respectfully submitted,

McQUAIDE BLASKO

By: 
Allen P. Neely, Esquire
I.D. No. 65302
811 University Drive
State College, PA 16801
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apneely@mcquaideblasko.com

**Counsel for Respondent,
The Pennsylvania State University**

EXHIBIT A

26044143071

Internal Revenue Service
Revenue Ruling

TaxLinks.com sm

Rev. Rul. 72-512

1972-2 C.B. 246

Sec. 501

IRS Headnote

A university is not participating in political campaigns within the meaning of section 501(c)(3) of the Code by providing a political science course that requires the students' participation in political campaigns of candidates of their choice.

Full Text

Rev. Rul. 72-512

Advice has been requested whether, in the circumstances described below, an organization has participated in political campaigns on behalf of candidates for public office within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954.

The organization is a university exempt from Federal income tax as an educational organization described in section 501(c)(3) of the Code. As part of its political science program, it provides a credit course to acquaint students with the basic techniques of effective participation in the electoral system. Any student may register in the course. The student participates in several weeks of classroom work to learn about political campaign methods, then he is excused from classes for two weeks to participate in the political campaign of a candidate of his choice. After the election, the student must show by means of a log that he has spent between 60 and 80 hours on campaign work and must write a paper evaluating his experiences.

The university does not influence the student in his choice of a candidate or control his campaign work. The university is reimbursed or paid for any services or facilities provided to the students for use in connection with the campaigns.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations that are organized and operated exclusively for educational purposes and that do not participate in any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

The course described above is exclusively educational in nature since it is provided as part of the university's political science program solely for the purpose of improving or developing the student's knowledge and skills.

The student activities in question represent a bona fide course of conduct in fulfillment of a formal course of instruction conducted by the university. Where the extent and manner of student participation in the actual political process in such cases is reasonably germane to the course of instruction, the fact that such course is a part of the university's curriculum and that university personnel and facilities are employed in its conduct does not make the university a party to the expression or dissemination of political views of the individual students in the course of their actual campaign activities.

within the intendment of section 501(c)(3).

Accordingly, it is held that this university is not participating in political campaigns on behalf of candidates for public office within the meaning of section 501(c)(3) of the Code.

26044143073

Internal Revenue Service
Revenue Ruling

TaxLinks.com sm

Rev. Rul. 72-513

1972-2 C.B. 246

Sec. 501

IRS Headnote

The provision of facilities and faculty advisors for a campus newspaper that publishes the students' editorial opinions on political and legislative matters does not constitute an attempt by the university to influence legislation or participate in political campaigns.

Full Text

Rev. Rul. 72-513

Advice has been requested whether, in the circumstances described below, an organization has attempted to influence legislation and participated in political campaigns on behalf of candidates for public office within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954.

The organization is a university exempt from Federal income tax as an educational organization described in section 501(c)(3) of the Code. The university provides office space and financial support for the publication of a daily student newspaper. The newspaper provides training for students in various aspects of publishing, editing, and managing a daily newspaper, including coverage of political news and the preparation of editorial comments. Distribution of the newspaper is limited primarily to students of the university.

The university makes available several of its professors to serve as advisors to the newspaper staff. The editors and other staff members of the newspaper are students of the university. Editorial policy is determined by a majority vote of the student editors. Neither the university administration nor the advisors exercise any control or direction over the newspaper's editorial policy. A statement on the editorial pages makes it clear the views expressed are those of the student editors and not of the university. In customary journalistic manner, from time to time there are editorials taking a position on pending or proposed legislation and candidates for political office.

Section 501(c)(3) of the Code provides that an organization exempt under its provisions is one that is organized and operated exclusively for educational purposes, no substantial part of the activities of which is attempting to influence legislation, and which does not participate in any political campaign on behalf of any candidate for public office.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities. The processes of gathering news, doing research, analyzing data, writing, and editing material for the newspaper on any subject (including political and legislative matters) further the education of the students on the newspaper staff by improving and developing their knowledge and skills.

Student newspapers of the type involved have long been an established feature of university operation and have long been accepted as not only an integral part of the university life of students and faculty but also an extension of the formal instructional process itself. The expression of editorial opinion on political and legislative matters in the manner

described is likewise a commonly accepted feature of legitimate journalism, and would accordingly appear to be an accepted feature of legitimate student newspapers.

The publication and dissemination of the editorial statements in question are acts and expressions of opinion by students occurring in the course of bona fide participation in academic programs and academic-related functions of the educational institution. In such circumstances, the fact that the university furnishes physical facilities and faculty advisors in connection with the operation of the student newspaper does not make the expression of political views by the students in the publishing of the newspaper the acts of the university within the intendment of section 501(c)(3) of the Code. Cf., Rev. Rul. 72-512, page 246.

Accordingly, it is held that this university has not attempted to influence legislation or participated in political campaigns on behalf of candidates for public office within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954.

26044143075

EXHIBIT B

2604143076



THIS COULD BE YOUR

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PENN STATE



NEWS

[Friday, Oct. 1, 2004]



UPAC funds bulk of Michael Moore speech

By Kayur Patel [EMAIL](#)

Collegian Staff Writer

The contract is in the mail and the bills are almost paid for Academy Award-winning filmmaker Michael Moore's visit to Penn State's Bryce Jordan Center on Oct. 22.

"Everything looks good," said Megan Green, president of the College Democrats. "He [Moore] is pleased at how everything has turned out and is looking forward to being here on the 22nd. Between UPAC and fund raising, we've been able to cover the cost of it all."

University Park Allocation Committee (UPAC) chairman Tom Truong said the College Democrats were allocated about \$23,000 for Moore's visit to Penn State, \$15,000 of which will go toward Moore's speaking fee.

Green said the total cost of Moore's visit was about \$30,000, and added that about \$4,000 has been raised through private donations and about \$1,000 has come from Kerry-Edwards item donations.

"Half of the donations from the booths go to covering costs and the other half goes to covering Moore," Green said.

"We have checks that are continuing to pour in,"

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Green said. "By the end of the week, we expect to stop accepting donations for the event."

Green said Centre County Democrats have kept an envelope in their office asking for donations for the event.

"People see the envelope and give money," Green said.

Truong said that when UPAC allocates funding for speakers, the committee determines whether the speaker can benefit the university and provide a valuable out-of-class experience, but added that they will not fund speakers who are running political campaigns.

"Because they had put in a lot of fund raising, the committee felt that due to what they were able to raise and how it would enhance out-of-class experience, that was what was appropriate," Truong said.

Originally, Moore was scheduled to speak at Eisenhower Auditorium, but Moore and the College Democrats decided the center would be a better venue because it could accommodate more people, Green said.

UPAC allocation includes funding for lodging, meals, Moore's speaking fee, security and the venue.

Truong said the allocation process went as smoothly as it could have gone with such a large budget.

"To their credit, they did an excellent job to get program together," Truong said. "The committee noticed that and that's why the result was like that."

College Republicans chairman Andy Banducci said the College Republicans would have a presence at Moore's speech.

"We'll be handing out literature about the president and letting people know not to believe everything Michael Moore says," Banducci said.

Banducci said the College Republicans are on the road to getting Republican speakers to come to Penn State.

"With the proliferation of left-wing speakers, it's something we have to look in to," he said.

Moore's speech will start at 9:30 p.m.

Green said she would know if the event would require tickets after meeting with officials from the BJC.

"I'd like to see at least 5,000 people," Green said.



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Quick poll: Do you think Penn State should have no classes on Martin Luther King Jr. Day?

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Created: 2004-10-1 0:13:05 -5

EXHIBIT C

26044143080

FEDERAL ELECTION COMMISSION

In The Matter Of:

David T. Hardy

MUR 5550

AFFIDAVIT OF STANLEY E. LATTA

The undersigned, Stanley E. Latta, D.Ed., having been duly sworn according to law, hereby states that the following is true and correct to the best of his knowledge, information, and belief:

1. My name is Stanley E. Latta, D.Ed.
2. I am employed at The Pennsylvania State University ("Penn State") in the capacity of Director of Unions and Students Activities.
3. Each semester, Penn State students pay an activity fee, the proceeds of which go to fund a wide variety of student recreational and educational activities. A portion of these funds are disbursed by the University Park Allocation Committee ("UPAC"). UPAC is comprised of and directed by Penn State students.
4. For the Fall 2004 semester, UPAC's total programming budget was \$937,583.14. This amount came entirely from student activity fees. The Committee also received \$215,000 from Penn State's general fund. The general fund contribution was allocated to cover operational expenses, including staff salaries, office supplies, technical support costs, etc.
5. No general fund monies are allocated directly toward programming. All event related allocations are derived entirely from student activity fees.
6. Funding allocation decisions are made by a UPAC subcommittee known as the Programming Allocation Team ("PAT"), which consists of nine student-members. Requests for event funding are submitted by Penn State University Park students, faculty and/or staff. The PAT bears sole responsibility for making all funding decisions.
7. In recent years, UPAC-funded events have included concerts and music festivals, dances, movie screenings, student blood drives, HIV awareness programs, academic seminars, ethnic festivals, and the homecoming parade. UPAC has also funded appearances by speakers on a vast array of topics, including Michael Moore and political commentators from across the spectrum.

26044143081

8. By way of example, between 2002 and 2004, a student group named Young Americans for Freedom requested and was granted \$78,768.44 in UPAC proceeds to fund appearances by a number of speakers, including conservative authors Bernie Goldberg, Michelle Malkin and Ann Coulter; John Stossel (of ABC News), and Walter Williams (George Mason University professor and occasional guest host for Rush Limbaugh). The Penn State College Republicans made four requests for funding between 2001 and 2004, all of which were granted. A total of \$23,053.18 was allocated for such speakers as conservative columnists David Horowitz, Jonah Goldberg and Peter Beinart.

9. Michael Moore's appearance was funded through the standard processes outlined above.

10. In May of 2004, the Penn State College Democrats, a recognized student organization, submitted a request to UPAC for funding. Mr. Moore's appearance was not sought or requested by Penn State, nor any agents of Penn State.

11. The Penn State College Democrats later submitted a supplemental funding request after unanticipated costs arose. The total amount requested for this event was \$26,378.00. This request was found to have been appropriately submitted, and the PAT decided funded the event, although not for the full amount. The total amount ultimately allocated by UPAC was \$23,396.00.

12. Additional funding for the event was raised by the Penn State College Democrats. Penn State took no part in soliciting any additional funds from outside sources.

13. Penn State did not undertake any promotion of Michael Moore's appearance, other than the routine listing of the event at various places, such as event calendars and schedules.

14. In addition to the UPAC program, Penn State regularly hosts speakers whose appearances are facilitated and/or funded through other means.

15. On October 22, 2004, the night of Mr. Moore's appearance, a speech was given on campus by Michael Gallagher, a nationally syndicated conservative talk radio host. Mr. Gallagher's visit was brought about by the Young Americans for Freedom, for the purpose of countering Mr. Moore's appearance. No request for funding was made for this event.

16. On October 29, 2004, President George H.W. Bush appeared on campus at the request of the Penn State College Republicans. No request for funding was made for this event.

17. Each year, Penn State's Distinguished Speakers Series offers a diverse program of nationally and internationally known individuals. This program also receives funds from student activity fees. Speaker selections are not made by UPAC, but a separate student committee.

18. In recent years, the Distinguished Speakers Series has presented, among others, Robert Novak, Howard Dean, Charleton Heston, William F. Buckley, John Walsh, Christopher Reeve, Janet Reno, Ben Stein, Elie Wiesel, Hank Aaron, Jeanne Kirkpatrick, Bob Woodward, Jesse Ventura, William Schultz, Gloria Steinem, and Ervin "Magic" Johnson.

19. All programming decisions by student organizations, including UPAC, are made solely by students and without interference from the administration of Penn State.

Dated: January 11, 2005

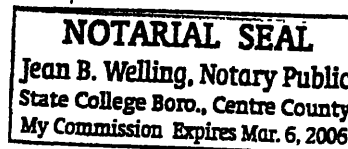
Stanley E. Latta
Stanley E. Latta, D.Ed.

COMMONWEALTH OF PENNSYLVANIA }
 } ss.
COUNTY OF CENTRE }

On this, the 11 day of January, 2005, before me, the undersigned notary public, personally appeared Stanley E. Latta, D.Ed., known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals.

Jean B. Welling
Notary Public
[SEAL]



26044143083

EXHIBIT D

26044143084

FEDERAL ELECTION COMMISSION

In The Matter Of:

David T. Hardy


MUR 5550

AFFIDAVIT OF MR. ROBERT G. HOWARD

The undersigned, Robert G. Howard, having been duly sworn according to law, hereby states that the following is true and correct to the best of his knowledge, information, and belief:

1. My name is Robert G. Howard.
2. I am employed at The Pennsylvania State University ("Penn State") in the capacity of General Manager of the Bryce Jordan Center, a sports and entertainment arena located on the campus of The Pennsylvania State University ("Penn State").
3. Michael Moore appeared at the Bryce Jordan Center on October 22, 2004.
4. This event was sponsored and facilitated by the Penn State College Democrats, a recognized student group.
5. To the best of my knowledge, Penn State did not in any manner endorse this event nor take any position with regard to any viewpoints expressed by Mr. Moore.
6. To the best of my knowledge, Penn State did not engage in any advertising or promotion of Mr. Moore's appearance. Bryce Jordan Center staff members did nothing more than our standard practice of issuing a press release and listing the event on the Bryce Jordan Center's marquee and website.
7. No funds were expended for promotional purposes.
8. No Penn State officials appeared on stage during Mr. Moore's appearance.

Dated: 1/11/05, 2005


Robert G. Howard

26044143085

COMMONWEALTH OF PENNSYLVANIA

}

} ss.

COUNTY OF CENTRE

}

On this, the 11th day of January, 2005, before me, the undersigned notary public, personally appeared Robert G. Howard, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seals.

Drena G. Russler

Notary Public

[SEAL]



2604143086

EXHIBIT E

26044143087

Student Event Program Planning Form

To be completed by the sponsoring student organization(s)/student groups/students:

Organization: College Democrats

Contact: Megan Green Phone: _____

E-mail: meg214@psu.edu

Name of Event: Michael Moore

Anticipated Attendance: 500 Proposed Location: Alumni Hall

Date(s) (include day of week): Wed October 6th 2004 Time(s): 8pm - 10pm

Description of event (please attach a schedule of events and additional sheets if necessary):

Michael Moore will give a speech on liberalism in the US post 9/11.

Will this event contain the presentation of material, whether oral, written, or visual, which is sexually explicit or graphically violent?
☒ No ☐ Yes

Is this event co-sponsored? ☒ No ☐ Yes If yes, with whom? _____

Will you be selling tickets or collecting donations at the door? ☐ Yes ☒ No

If yes, what will the price be for: \$ _____ students \$ _____ faculty/staff \$ _____ community members

Will food be served? ☐ Yes ☒ No

Will this program be sponsored in conjunction with LateNight-PennState? ☐ Yes ☒ No

Will the sponsoring organization (s) be requesting funds from the University Park Allocation Committee (UPAC)? ☒ Yes ☐ No

Will a speaker, DJ or other entertainment be performing at your event? ☒ Yes ☐ No

If yes, please include names of performers, amount of honoraria, and, if known other colleges and universities where they have performed (you may attach additional sheets). Michael Moore - director and author

Comments:

Richelle Peretti - contracting

Signatures:

Signatures do not indicate approval of an event, only that the group has met with a member of the Student Activities Office to receive program planning assistance.

Megan E. Green
Student Organization Representative

May 17 2004
Date

J. Chosma
Student Activities Office Representative

5/17/04
Date

Event Management Office Representative/Venue Representative

Date

Contracts Office Representative

Date

UPAC Office Representative

Date

<OVER>

26044143088

Other Required Signatures (to be determined by Student Activities Office Representative)

Office: _____ Date _____

Office: _____ Date _____

Office: _____ Date _____

Deadlines (to be completed by each area necessary)

UPAC deadline to submit request: _____ (204 HUB-UPAC Office)

Start contract process: _____ (207 HUB-Student Activities Office)

Turn in completed contract : _____ (207 HUB-Student Activities Office)

Set-up turn in deadline: to be determined by Events Management/Venue Representative

Check request deadline: _____ (240 HUB-ASA office)

Complete evaluation deadline: _____

Other deadline _____

Other deadline _____

For Office Use:

Date program planning form returned: _____

Event Added to WebEvent Calendar _____

Date evaluation sent to group: _____

Date evaluation returned: _____

EXHIBIT F

26044143090

IN A TIME OF UNIVERSAL DECEIT - TELLING
THE TRUTH IS A REVOLUTIONARY ACT...

— George Orwell

Attorney Andrew Shubin proudly joins
the Penn State College Democrats
in welcoming

Award Winning Filmmaker

Michael Moore

to State College and The Pennsylvania
State University. Michael Moore will
be speaking at the Bryce Jordan
Center on October 22, 2004 at 9:30pm.
Tickets required, but free.

The Law Office of Attorney Andrew Shubin
A Civil Rights and Criminal Defense Law Firm
215 East Beaver Avenue
State College, PA 16801
814-867-3115
shubin@statecollegelaw.com
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EXHIBIT G

26044143092



THE DIGITAL COLLEGIAN

PUBLISHED
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PENN STATE



NEWS

[Monday, Oct. 25, 2004]



Packed crowd gets first look at Gallagher's film

By Lesley O'Connor [EMAIL](#)
Collegian Staff Writer

Conservative radio talk show host Mike Gallagher premiered his film, *FahrenHYPE 9/11*, to a packed audience Friday night in 100 Thomas Building, practically in the backyard of his political opposite's visit to the Bryce Jordan Center.

Gallagher said the goal of his visit, spurred by liberal filmmaker Michael Moore's visit being paid partially through student fees, was to "raise one penny more than the \$30,000 that the fatso down the street needed to be here tonight."

Instead, Gallagher said \$61,000 was raised for Gallagher's Army, a non-profit charity organization that supports U.S. troops, with most of the donations coming from Happy Valley.

A live auction at Friday's event, hosted by the Penn State Young Americans for Freedom and the Penn State College Republicans, also helped to raise an additional \$1,200.

"People are calling me a moron and wanting to throw pies in my face, but it's all worth it seeing the support here tonight," Gallagher said after receiving a standing ovation from the audience in Thomas Building.

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Gallagher also responded to claims that he was trying to censor Moore by coming to Penn State on the same night, saying he instead wanted to counteract the liberal filmmaker's visit.

"We just want our side to be heard here too," Gallagher said.

Carlton Sherwood, an investigative journalist and Pulitzer Prize winner, also spoke to the audience about Democratic presidential candidate Sen. John Kerry.

Sherwood, who produced the anti-Kerry documentary *Stolen Honor: Wounds That Never Heal*, showed his documentary after Gallagher's film premiere.

"This is a story the press will not tell," Sherwood said.

"What John Kerry did to us [Vietnam veterans] in 1971 can't happen again to the brave young men and women fighting in Iraq right now."

Three staff sergeants in the U.S. Army who were injured while fighting in Iraq also spoke to the crowd.

Staff Sgt. Larry Gill refuted Moore's claim in *Fahrenheit 9/11* that the U.S. Army is not supportive of the war in Iraq.

"Despite what the other guy [Moore] says, we just don't quit and get injured to get out of Iraq," he said.

"The best way to support the troops is to go out into your communities and tell people to put Bush back in office," he added.

Michelle Knittel (sophomore-finance), a member of the College Republicans, said she thought there were a lot of students who came to the event even though it was Homecoming weekend.

"I thought there wouldn't be many students here, but I think there was a really good turnout here tonight," she said.

Many students at the event said they enjoyed the chance to hear what Republicans had to say in response to Moore.



PHOTO: Megan Elvrum

Conservative radio talk show host Mike Gallagher speaks in Thomas Building. Gallagher premiered his film *FahrenHYPE 9/11* to more than 100 in Thomas Building.

"I've heard one side through Michael Moore's perspective, and I wanted to hear the Republican view, and see Moore challenged for once," Elizabeth Riva (junior-advertising) said.

"I think ever since *Fahrenheit 9/11* everyone just seems to believe what they hear, and I think tonight's film was a good way to open up people's eyes," she added.

Joey Hudson, executive director of Gallagher's Army, said he thought the radio commentator's event had a big impact on students.

"I think this event certainly energized and motivated students who support the Republican Party, and I think they will work harder now to encourage the community to vote," he said.

Hudson added that after learning of Friday's event, many other schools have contacted Gallagher.

"As a result of this event, we've been contacted by other universities," Hudson said. "Some people are even suggesting we follow Moore around."

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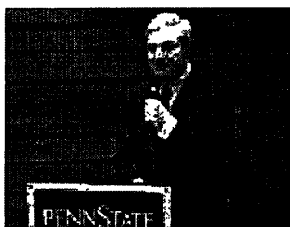


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Op-ed: Free speech embraced at Penn State



Vicky Triponey, vice
president for student
affairs at Penn State

By Vicky Triponey
Vice President for Student Affairs

At some colleges and universities around the nation this fall, Michael Moore is speaking to crowds of tens of thousands of students. Under pressure from legislators, parents, donors, alumni and conservative groups, other University arenas sit empty, with speeches by Moore canceled because some people disagree with the filmmaker's politics.

Michael Moore is scheduled to speak at Penn State on Oct. 22, and even with Homecoming activities in full swing he is likely to draw several thousand people. Also currently slated to speak at Penn State that day is conservative radio talk show host Mike Gallagher. He is angry that Penn State students have invited Moore to campus and is staging a protest.

Fortunately we live in a country that values free speech -- everyone's free

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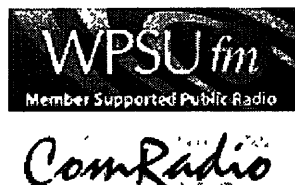
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speech -- and we have a Constitution that protects the right of Penn State students to invite a broad range of speakers to campus. Thus we believe both Moore and Gallagher can and should visit campus.

The clear winners in this mini-drama over Constitutional rights are Penn State students. As we approach election day in this important, hotly contested national election Penn State students will have the opportunity to hear advocates on both sides advancing their perspectives.

We know in this case both speakers have agendas. Both speakers are using Penn State's national visibility to advance their own ideas; both claim to be patriots who love their country, albeit in very different ways; both maintain Web sites where you can buy their products and their point of view; and both profit financially from their work.

What is most important at Penn State is that both speakers -- one strongly against President Bush and one strongly for President Bush -- have a right to speak. This is the promise of the First Amendment of our Constitution. The right to disagree is the foundation of our government.

Some people support and defend the First Amendment. Others say they support the First Amendment, but only when it protects their own cause and not a cause with which they disagree. At Penn State, we embrace the First Amendment -- in principle and in practice.

The long list of conservative speakers who have appeared on Penn State stages in recent years ranges from President George W. Bush to Anne Coulter. From Robert Novak to Jeanne Kirkpatrick. From William F. Buckley Jr. to Oliver North, and from Phyllis Schlafly to Michelle Malkin.

A good university is not threatened by a conservative speaker, and it is not threatened by a liberal speaker. Penn State is a great University; supporting our students in their freedom to present and hear divergent points of view.

For every caller who has described Michael Moore as a traitor, we have heard others describe him as a patriot. For every writer who has said Moore vilifies the president in his movie, another has said that quotes from the president in the movie are in fact words he probably now regrets but actually said.

So where does the truth lie?

Does the talk show host with the most listeners win or is the winner the movie-maker who sells the most tickets at the box office?

One way to find out is go to Moore's speech and listen to him, and also to hear the message from conservative speakers like Mike Gallagher.

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And we encourage our students to hear both of them.

There still are places in the world where this freedom is not available. In those places there is no free speech for anyone except a ruling party or their dictator.

We have a thoughtful process on campus where student groups can propose speakers and request funding from a student committee that allocates a budget generated from a student activity fee. Some students choose not to attend the plays, movies or activities supported by their fees. Sometimes funds are allocated for speakers who draw a small audience and other times, groups raise their own funds from other sources, such as private donations and fund raisers.

The important principle at Penn State is that students are making these decisions regarding who to invite. And overall they seem to have a sense of balance and fairness in their funding decisions.


In the end our students are better off, better served and better educated when they can listen to both sides of important debates. That is something students at some schools will not get to do this fall. In those cases, free speech has been attacked and successfully stifled.


At Penn State, we welcome Michael Gallagher and Michael Moore. We are glad Theresa Heinz Kerry and Michelle Malkin were here earlier this fall. We look forward to Bernard Goldberg and Howard Dean's visits in the coming weeks, and we have extended invitations to both presidential candidates to visit and talk with our students.

We applaud our students for inviting these speakers, for exercising their right to free speech, and for learning about the issues that affect their world. And we encourage them to vote on Nov. 2.

This is American democracy in action at Penn State.

Vicky Triponey is vice president for student affairs at Penn State University.

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