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STUDENTS AND ACADEMICS FOR FREE  
EXPRESSION, SPEECH, AND POLITICAL  
ACTION IN CAMPUS EDUCATION, INC.,

Petitioner  
v.  
Commissioner of Internal Revenue  
Respondent

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Docket No. 4261-24X  
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**Petition**

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UNITED STATES TAX COURT

STUDENTS AND ACADEMICS  
FOR FREE EXPRESSION, SPEECH,  
AND POLITICAL ACTION IN  
CAMPUS EDUCATION, INC.,

Petitioner,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent.

Docket No. \_\_\_\_\_

**PETITION FOR DECLARATORY JUDGMENT (EXEMPT  
ORGANIZATION)**

Pursuant to section 7428 of the Internal Revenue Code (the “Code”), Students and Academics for Free Expression, Speech, and Political Action in Campus Education, Inc. (“SAFE SPACE”) petitions this Court for a declaratory judgment regarding its qualification as an organization described in section 501(c)(3) of the Code and alleges as follows:

**Nature of the Action**

1. SAFE SPACE is non-profit organization devoted to educating students, faculty, colleges, universities, other educational institutions, and the general public about the importance of advancing free speech and intellectual diversity in higher education and to promoting principles of free expression, speech, and political action in educational settings. Operated by volunteers on a shoestring budget, SAFE

SPACE will organize events at U.S. colleges and universities and create and publish written materials that advance its mission.

2. SAFE SPACE is organized and operated exclusively for charitable and educational purposes, and its dissolution clause requires it to distribute to other section 501(c)(3) organizations any assets remaining after satisfaction of creditors. SAFE SPACE accordingly filed Form 1023 with the IRS to obtain recognition of its tax exemption as an organization described under section 501(c)(3).

3. In its exemption application, SAFE SPACE acknowledged that it will engage in candidate endorsements and “substantial” lobbying activities in contravention of section 501(c)(3)’s political speech and lobbying restrictions because these activities are critical to its charitable and educational mission. *See* 26 U.S.C. § 501(c)(3) (“no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office”).

4. SAFE SPACE’s expression of informed and educational views on candidates and legislation in furtherance of its mission should not be silenced. A law that prohibits a nonprofit from “creating a Web site telling the public to vote for a Presidential candidate in light of that candidate’s defense of free speech” is a “classic example[] of censorship” in violation of the First Amendment. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 337 (2010). This is precisely what section 501(c)(3)’s political speech and lobbying restrictions do: muzzle the voices of

nonprofits on the most pressing political questions of the day. The unconstitutionality of section 501(c)(3)'s political speech and lobbying restrictions is even more apparent with respect to SAFE SPACE because the low- to no-cost of SAFE SPACE's political speech and lobbying activities means the government, simply by recognizing SAFE SPACE's tax exemption, could never be viewed as subsidizing those activities. Section 501(c)(3)'s political speech and lobbying restrictions are therefore not only facially unconstitutional, but also unconstitutional as applied to SAFE SPACE.

5. The IRS has failed to issue any determination on SAFE SPACE's application for over 270 days, thereby constructively denying the application. SAFE SPACE accordingly petitions this Court for a declaratory judgment recognizing its qualification as a tax-exempt organization described under section 501(c)(3).

### **Procedural Background**

6. Petitioner's name is Students and Academics for Free Expression, Speech, and Political Action in Campus Education, Inc. ("SAFE SPACE"), and its principal place of business is 609 Metairie Road, Number 8162, Metairie, LA 70005.

7. SAFE SPACE electronically submitted to the IRS a Form 1023 Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code on June 12, 2023.

8. SAFE SPACE submitted its annual information return on Form 990-N on February 19, 2023.

9. The IRS has not issued any notice of determination regarding SAFE SPACE's Form 1023 application.

10. SAFE SPACE has exhausted its administrative remedies within the IRS.

### **Factual Allegations**

11. The following factual allegations are established by SAFE SPACE's Form 1023 application and accompanying materials, attached hereto as Exhibit A.

#### *SAFE SPACE's Formation*

12. SAFE SPACE was formed in 2023 by Ilya Shapiro, who serves as the organization's President. Mr. Shapiro is Senior Fellow and Director of Constitutional Studies at the Manhattan Institute; he previously served as the Vice President and Director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute. Robert Alt, the President and Chief Executive Officer of the Buckeye Institute, is the Vice President of SAFE SPACE. James Baehr, a constitutional litigator and founder of the Pelican Center for Justice at the Pelican Institute, is the Secretary.

13. The mission statement of SAFE SPACE is:

Students and Academics for Free Expression, Speech, and Political Action in Campus Education, Inc. ... educates students and the general public on the importance of freedom of thought and intellectual diversity on campus, and promotes principles of free expression, speech, and political action ("Free Speech Principles") including by lobbying to enact legislation and endorsing candidates for elective office who support Free Speech Principles.

14. Mr. Shapiro founded SAFE SPACE because both his personal and professional experience has made him a passionate defender of free thought and expression in educational settings.

15. Personally, Mr. Shapiro is a refugee from the Soviet Union. There, his family experienced firsthand the dangers of living in a society that fails to respect free speech. His paternal grandfather was killed during Joseph Stalin's "Great Purge" for the crime of being a Jewish doctor educated at a European university, and his parents' career prospects were diminished because of their anti-communist views. In stark contrast to this repressive experience, Mr. Shapiro benefited from attending college in the United States—Princeton University and the University of Chicago Law School—where he savored the opportunity to engage in open and vigorous intellectual debates on controversial subjects with his professors and fellow students.

16. Professionally, Mr. Shapiro has sought to advance free speech during his tenures at Cato and the Manhattan Institute, especially free speech on college and university campuses. Mr. Shapiro's forthcoming book, *Lawless: The Miseducation of America's Elites* (Broadside Books 2024), addresses the growing intolerance at U.S. law schools. In 2022, Mr. Shapiro accepted a position at Georgetown University Law Center as a Senior Lecturer and Executive Director of its Center for the Constitution, where he hoped to bring ideological diversity to campus. Days before he was to start, Mr. Shapiro published a tweet criticizing President Biden for limiting his pool of potential Supreme Court nominees by race and sex; that tweet was maliciously mischaracterized by reactionary students and professors, leading to Mr. Shapiro's administrative suspension. Although the university investigation cleared Mr. Shapiro on a technicality, Mr. Shapiro explained that its report "made clear that I'd face discipline the next time I transgressed progressive orthodoxy."

Mr. Shapiro emphasized that he “did not escape the Soviet Union just to live under a different set of commisars, so I resigned.”

17. Mr. Shapiro is deeply concerned about the current illiberal climate at U.S. colleges and universities. Conservative guest speakers on campus have their events disrupted, and students and professors have been conditioned to keep any non-progressive views private. The current practice of requiring prospective students and professors to submit “Diversity, Equity, and Inclusion” statements also is a thinly veiled mask for admitting students and hiring based on left-wing political views, race, and sex. *See* John D. Sailer, *Wall Street Journal*, *Inside Ohio State’s DEI Factory* (Nov. 20, 2023).<sup>1</sup> Like Mr. Shapiro’s experience in the Soviet Union, one’s adherence to the prevailing orthodoxy is more important than academic merit and dissent is discouraged.

18. To address these concerns, Mr. Shapiro, along with Mr. Alt and Mr. Baehr, formed SAFE SPACE to educate students and others on the importance of free-thinking, intellectually diverse college and university campuses and to develop policy solutions that promote, encourage, and support freedom of thought and speech in educational settings. Simply put, SAFE SPACE aims to make colleges and universities a safe space for free expression.

19. SAFE SPACE’s articles of incorporation require it to operate for public purposes and prohibit it from operating either to provide any direct or substantial benefit to any private entity or individual or to distribute net profits to insiders. 100%

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<sup>1</sup> Available at <https://www.wsj.com/articles/inside-ohio-states-dei-factory-faculty-report-diversity-hiring-cefd804d>.

of SAFE SPACE's time will always be spent on the organization's charitable and educational purposes and raising resources to further those purposes.

#### *SAFE SPACE's Operations*

20. SAFE SPACE will achieve its purposes by educating students and the general public on the importance of freedom of thought and intellectual diversity on campus and promoting the principles of free expression, speech, and political action ("Free Speech Principles").

21. To advance its mission, SAFE SPACE will convene lectures, debates, and other events on the campuses of U.S. colleges and universities instructing students and others on the history, importance, and practice of freedom of thought, freedom of speech, and civil discourse so that students can experience firsthand the benefits of ideological pluralism. Its debates will present students with opposing views on additional topics, like current public policy questions, which will instruct them not only on those topics, but also provide a model of how to engage productively with one's ideological counterparts.

22. SAFE SPACE also will produce written publications and create educational materials on the importance of the Free Speech Principles. The educational materials and information developed and published by SAFE SPACE will include information on legislation that relates to the organization's mission, analyses of different legislative approaches, and articles by scholars and others on the importance of free speech in educational settings and on policy approaches to promote, encourage, and support freedom of thought and speech in educational settings. SAFE SPACE also plans to develop and publish one or more sets of policy

proposals applicable to educational institutions to protect Free Speech Principles on their campuses.

23. SAFE SPACE will develop and publish a website that includes the foregoing materials and information. A website is a low-cost, highly effective measure for reaching a wide audience. The website will be developed and hosted for a low, flat fee; there will be no additional expense for developing and hosting additional pages or materials on the website.

24. SAFE SPACE also will regularly send e-mail newsletters to financial supporters and other persons sharing the foregoing materials and information. There will be no additional expense for adding an additional section or text to the e-mail newsletters. Like a website, an e-mail newsletter is a low-cost, highly effective measure for reaching a wide audience.

25. SAFE SPACE plans to support candidates in political campaigns, regardless of party affiliation, because the ability to endorse candidates furthers SAFE SPACE's educational and charitable purposes. SAFE SPACE's support will be limited to endorsing candidates for local, state, and federal offices who pledge commitment to SAFE SPACE's Free Speech Principles by publishing their names (and offices sought) on a "Candidate Endorsements" page of its pre-existing website and in its pre-existing newsletter, which may also be archived on its website. The cost to SAFE SPACE of endorsing candidates and publishing its endorsements will be zero.

26. SAFE SPACE plans to attempt to influence legislation in furtherance of SAFE SPACE's educational and charitable purposes. Specifically, when the

opportunity arises for legislative action to improve the environment for free speech, or to prevent violation of free speech rights, SAFE SPACE intends to engage in a substantial amount of legislative advocacy by promoting bills that advance its Free Speech Principles, advocating for appropriate amendments to the bills, and encouraging legislators to pass the bills. Because a large part of SAFE SPACE's non-lobbying activity will be accomplished at little or no expense to the organization, its lobbying expenses will compose a substantial portion of its overall expenses in years when SAFE SPACE is engaged in lobbying. SAFE SPACE will only engage in substantial lobbying activities that further its educational and charitable purposes. SAFE SPACE's non-lobbying activities will always constitute a majority of its total expenditures.

27. SAFE SPACE will not be able to engage in its endorsement and lobbying activities unless it is permitted to do so as 501(c)(3) organization. It is not feasible for SAFE SPACE to establish separate section 501(c)(4) or section 527 organizations to engage in these activities. SAFE SPACE is a new, small non-profit organization, and all of its fundraising activity needs to be directed towards supporting its section 501(c)(3) organization. SAFE SPACE cannot afford to divert resources to separate section 501(c)(4) or section 527 organizations. In addition, SAFE SPACE will engage in lobbying and endorsement activities on an intermittent basis—for example, when relevant legislation is being considered—and establishing, operating, and fundraising for separate entities that engage in such intermittent advocacy is not practical. Establishing and operating section 501(c)(4) and section 527 organizations also would impose significant administrative burdens,

such as by requiring the maintenance of separate bank accounts, additional reporting obligations like filing multiple tax returns, and safeguards to ensure that the activities of the sections 501(c)(3), 501(c)(4), and 527 organizations remain separate. For a small organization like SAFE SPACE, these administrative burdens are insurmountable.

28. The IRS's failure to timely act on and approve SAFE SPACE's application for recognition of exemption has harmed SAFE SPACE. As a practical matter, section 501(c)(3) status is critical for most non-profits, including SAFE SPACE, to be able to attract donations and operate successfully.

### **Legal Allegations**

29. SAFE SPACE currently meets all the requirements of an organization described in section 501(c)(3) of the Code, except for that it intends to endorse candidates for public office and engage in substantial lobbying.

30. SAFE SPACE is organized and operated exclusively for charitable and educational purposes, and no part of its net earnings inures to the benefit of any private shareholder or individual.

31. SAFE SPACE will endorse candidates for public office, in contravention of section 501(c)(3)'s political speech prohibition and implementing regulations. *See 26 U.S.C. 501(c)(3)* (providing that non-profits shall “not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office”); 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii). But section 501(c)(3)'s political speech prohibition is unconstitutional on its face and as applied to SAFE SPACE.

32. A substantial part of SAFE SPACE's activities at times will be attempting to influence legislation, in contravention of section 501(c)(3)'s lobbying restriction and implementing regulations. *See* 26 U.S.C. 501(c)(3) (providing that "no substantial part of the activities of" a nonprofit shall constitute "carrying on propaganda, or otherwise attempting, to influence legislation"); 26 C.F.R. § 1.501(c)(3)-1(c)(3)(ii). But section 501(c)(3)'s lobbying restriction is unconstitutional on its face and as applied to SAFE SPACE.

33. For the same reasons that SAFE SPACE qualifies as an organization under section 501(c)(3) of the Code, donations to SAFE SPACE qualify as as "charitable contributions" under section 170(c)(2) of the Code and implementing regulations, which contain identical political speech and lobbying restrictions. Like section 501(c)(3)'s political speech and lobbying restrictions, section 170(c)(2)'s political speech and lobbying restrictions are unconstitutional on their face and as applied to SAFE SPACE.

#### **Prayer for Relief**

34. SAFE SPACE respectfully asks that this Court enter judgment in its favor and grant the following relief:

A. Declare that SAFE SPACE qualifies as a tax-exempt organization described in section 501(c)(3) of the Code and implementing regulations because the section's political speech and lobbying restrictions are unconstitutional on their face and as applied to SAFE SPACE;

- B. Declare that donations to SAFE SPACE qualify as “charitable contributions” under section 170(c)(2) of the Code and implementing regulations because the section’s political speech and lobbying restrictions are unconstitutional on their face and as applied to SAFE SPACE; and
- C. Grant such other and further relief as the Court deems appropriate.

Dated: March 18th, 2024

Respectfully submitted,

/s/ Andrew M. Grossman

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