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Joseph N. Crowley  
*Interim President*

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Samantha K. Harris, Program Officer  
Foundation for Individual Rights in Education  
601 Walnut Street, Suite 510  
Philadelphia, PA 19106

Dear Ms. Harris:

Thank you for your March 31<sup>st</sup> letter. Thanks also for the invitation to inform you if we believe you are in error with respect to your observations and accusations. I do want to take advantage of that invitation.

Let me note first that, while we might not see eye-to-eye on all the nuances, complications, and uncertainties regarding the application of First Amendment freedoms, I have been an admirer of the work of your organization in upholding those freedoms. Currently, I serve as Interim President of the University. Previously (until 2001), I was privileged to be the President here for 23 years. Before, after, and on occasion, during presidential service, I taught courses in American politics and constitutional history that always included an emphasis on the First Amendment and its development. I have written about its history in the context of higher education and, as well, with reference to the academic presidency. Lately, I have been invited each fall to offer a presentation on the First Amendment and the academy to a class of senior journalism majors (making reference, by the way, to cases in which FIRE has been substantially involved). I don't mean to belabor my professional and personal interest and experience in First Amendment matters. I refer to that interest and experience here only as background for my contention that your condemnatory conclusions are wrong and that the University's record in upholding First Amendment freedoms is demonstrably strong.

College of Agriculture, Biotechnology and Natural Resources, College of Business Administration, College of Education,  
College of Engineering, College of Human and Community Sciences, College of Liberal Arts, College of Science,  
Donald W. Reynolds School of Journalism, Graduate School, Nevada Cooperative Extension, School of Medicine, University Libraries

I believe, as I'm sure do you, that universities have a special obligation to generously honor those freedoms. Recently, the subject of free expression has received substantial and varied attention on the campus. For example, we are in the process of updating the policies to which your letter refers; policies, I should note, that have been given a broad and flexible interpretation. Frankly, I cannot recall any serious issue being taken over the years with these policies. In practice, we have done well. On paper, we have not, in a sense, preached what we have practiced. The need to update space-use policies led the previous administration to initiate an effort last fall to develop more expansive language than that found in the University's Administrative Manual. That effort was well underway by the time I assumed the interim position last December. At about that time, the ACLU began a conversation with the Nevada System of Higher Education (NSHE) Board of Regents regarding First Amendment policies, proposing an approach very similar to your own. As part of the updating process, we have undertaken an examination of recent case law on the question, particularly with respect to time, place, and manner rulings. I also encouraged students to become involved in the discussion of First Amendment protections on the campus: indeed, the updating effort has been a priority of student government from the beginning.

It was in the context of this growing interest that some students gathered to express "outrage" over campus policy on space use. Unfortunately, only 14 students showed up at the protest event. One hoped for more. However, student government sponsored a well-attended panel discussion of the issues that same day, with representation from several constituencies, including the ACLU. Both before and after these events, a group of touring Christian fundamentalists held forth here loudly — on two occasions spread across a half-dozen days — on their view that gay people are inevitably consigned to eternal damnation as well as on other provocative Biblical interpretations. Our Graduate Student Association, as you observed, voted in favor of the ACLU proposal. Undergraduate student government, following a lively debate, voted against the proposal while maintaining nevertheless a strong pro-First Amendment stance. Shortly thereafter, at a NSHE Board of Regents meeting held on campus, a few members of the Board asked for a public conversation of a possible policy — opposed by the University — that would prohibit campus appearances by hip-hop groups whose lyrics encourage violence. Strong positions in opposition were expressed by a wide range of individuals, including an ACLU representative.

The Regents met in the Student Union. The fundamentalists held forth at two of the locations your letter described as “remote” and/or “small.” One of those locations — a “public forum” area — is the Student Union Plaza, bounded by a dining commons, a residence hall, a significant component of the library building, a humanities classroom and office building, and a student services facility. This area is neither remote nor small. It is of ample size. It is a focus of campus activity. It is heavily trafficked. The other area the fundamentalists used was the Barnes Plaza, directly in front of the library’s main entrance, also a very busy part of the campus that could not by the wildest stretch of the imagination be characterized as remote. When most of the public forum areas were identified years ago, a guiding idea was to set aside places where campus life is abundantly lived. That is the case with all four of the current public forum locations.

Further on the point, the University does not use the terminology “free speech zones” to describe the public forum areas, mainly because free speech is understood here to have a much broader application. In large measure, the controversies we have had over the years on freedom of speech have been tied to interior spaces — lecture rooms, theaters, art galleries, and the like. I believe the University has routinely --- and in the face of real outrage from a variety of campus and community groups --- come down on the side of free expression when controversial speakers or groups have appeared here. In addition, on these and other occasions, the institution has provided appropriate nearby space for protestors to express themselves, wherever on campus the events have occurred. We have been reasonable in allowing use of other campus locations. Spontaneous demonstrations, within the public forum areas or elsewhere on the campus, have gone forward without let or hindrance. For those exercises of free expression that have been planned, content has never been censored. The permit process is part of the review and updating effort.

We are a growing university. Much of the space usage policy was put in place years ago. Three of the public forum areas are located within the historic boundaries of the southern sphere of the campus, where the University was established in 1885-86. The remaining one — the Student Services Building Plaza — is a relatively short distance to the north. Now, the once sparsely settled northern geography is filling up. The School of Medicine has taken up much space at the northern boundary. The football stadium is close by. Lawlor Events Center is not far. All of these areas have been sites of protest demonstrations or other kinds of free expression, and

Lawlor has known notable controversy over speakers and entertainers. Soon, there will be a new library and, next to it, a new student union. That large parcel of geography will occupy, approximately, the middle of the campus. It will become an area abundantly traversed and ripe with campus life. It will doubtless provide a location where the First Amendment will find friendly environs.

Well, I could go on. We are on good terms here with the ACLU of Nevada, and long have been. As mentioned above, that organization has offered suggestions during our discussions of expanding our written policies on First Amendment freedoms. I'm sure its representatives will also have thoughts to offer as we work on reviewing and clarifying our understanding of time, place, and manner requirements. I hope to have the work done and new policies in place by the end of spring semester. I will make sure that your letter is circulated to those involved in our efforts so that we can benefit from consideration of your thoughts and recommendations.

Thank you again for your letter and the opportunity to reply. Please let me know if you have questions.

Sincerely,

  
Joseph Crowley

C: Bret Whipple, Chair, Board of Regents, NSHE  
James E. Rogers, Chancellor, NSHE  
Dan Klaich, Executive Vice Chancellor, NSHE  
Mary Dugan, General Counsel, NSHE  
John H. Frederick, Executive Vice President & Provost, UNR  
Shannon Ellis, Vice President for Student Services, UNR  
Ed Johnson, President, Graduate Student Association, UNR  
Jeff Champagne, President, Associated Students of the UNR  
Annie Flanzraich, Editor, Nevada Sagebrush  
Gary Peck, Executive Director, ACLU of Nevada  
Allen Lichtenstein, General Counsel, ACLU of Nevada