



## Foundation for Individual Rights in Education

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March 31, 2006

Interim President Joe Crowley  
University of Nevada, Reno  
Office of the President/001  
Reno, NV 89557-0016

*Sent by U.S. Mail and Facsimile (775-784-6429)*

Dear Interim President Crowley:

As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal equality, freedom of religion, academic freedom, due process, and, in this case, freedom of speech and expression on America's college campuses. Our website, [thefire.org](http://thefire.org), will give you a greater sense of our identity and activities.

FIRE is deeply concerned about the unconstitutionally restrictive speech policies of the University of Nevada, Reno. The university's Public Forum Policy, which designates only four small or remote areas on UNR's campus as "public forum" areas," chills expression on UNR's campus and ignores constitutional guarantees of freedom of speech that UNR, as a state-supported institution, is obligated to protect. UNR's implementation of "free speech zones" is a perversion of constitutional and statutory law and has no place at an institution committed to intellectual rigor, robust debate, and a free and vibrant community.

This is our understanding of the facts. Please inform us if you believe we are in error. Section 5,303 of UNR's Administrative Manual designates the following four areas as "public forum" areas": Jot Travis Student Union Plaza, Manzanita Bowl, Barnes Plaza, and the Student Services Building Plaza. Even student groups planning to gather within the designated "public forum" areas must provide prior notice to university officials and must receive signed approval. Moreover, according to Section 5,304 of the Administrative Manual, the rest of UNR's campus, including traditionally public areas such as lawns and sidewalks, is a "non-public forum."

In recent months, students at UNR have expressed their outrage over UNR's restrictive policies. In February, the Graduate Student Association passed a resolution calling upon the university to uphold the First Amendment rights of its students by allowing free speech all over its campus. It is our understanding that the Associated Students of the University of Nevada is considering a similar resolution.

As a public institution, UNR is legally obligated to uphold the First Amendment rights of its students and faculty. It has failed to do so. UNR's establishment of free speech zones that restrict and corral free expression is legally insupportable. The only possible defense of UNR's policy would be that it is a "reasonable time, place and manner" restriction as allowed by cases like *Ward v. Rock Against Racism*, 491 U.S. 781 (1989). There is nothing "reasonable," however, about transforming the vast majority of the university's property—indeed, *public* property—into a "censorship area," and in maintaining a system of onerous requirements by which students must abide in order to exercise their fundamental rights. Federal case law regarding freedom of expression simply does not support the transformation of public institutions of higher education into places where constitutional protections are the exception rather than the rule. Time and again, courts have determined that to be considered legal, "time, place, and manner" restrictions must be "narrowly tailored" to serve substantial governmental interests. The generalized concern for order that underlies the establishment of free speech zone policies is neither specific enough nor substantial enough to justify such restrictions.

FIRE has challenged the establishment of free speech zones at universities across the nation, including at West Virginia University, Seminole Community College in Florida, Citrus College in California, the University of North Carolina–Greensboro, and Texas Tech University. In all of these cases the institutions challenged have either decided on their own to open up their campuses to expressive activities or have been forced by a court to do so. For instance, in FIRE's case at Texas Tech, a federal court determined that Texas Tech's policy must be interpreted to allow free speech for students on "park areas, sidewalks, streets, or other similar common areas...irrespective of whether the University has so designated them or not." *See Roberts v. Haragan*, 346 F. Supp. 2d 853 (N.D. Tex. 2004). UNR would be well advised to take this into account in considering its own policies.

Moreover, UNR's strict regulations on speech are tragic in light of the fact that the special function of the university as a whole, in any free society, is to serve as the ultimate "free speech area." UNR affirms this sentiment in its Student Bill of Rights, which states that "[t]he University of Nevada exists for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. ***Free inquiry and free expression are indispensable to the attainment of these goals,***" and that "[s]tudents and student organizations shall be free to examine and to discuss all questions of interest to them, and to express opinions publicly and privately. They shall be free to support causes by legal and orderly means which do not interfere with the operation of the university or of its educational objectives." (Emphasis added.) UNR's Public Forum Policy runs afoul of both the First Amendment and UNR's own commitments to free speech by restricting speech and assembly to four small and/or out-of-the-way areas of its vast campus.

It is imperative that UNR immediately revise its illegal and immoral "free speech zone" policies. We offer you the following guidelines to help you revise your speech policies:

1. The default position of any policy should be that free speech is the norm all over the campus. In general, policies should say what a university *cannot* do in specific language, and, to a lesser extent, what restrictions are permissible and when. A truly progressive policy would mirror the Bill of Rights.
2. Schools cannot restrict speech to a small portion of campus, nor to inaccessible or sparsely used/populated areas of the campus only. The speech must be generally accessible to the population at large—and especially to the target audience.
3. Speech may not be unduly restricted by pre-registration regulations, onerous monetary deposit requirements, or expensive insurance requirements. No rule that allows the school substantial discretion to impose conditions on speech for groups or individuals is allowable. Discretionary decisions need to be “content and viewpoint neutral,” meaning they implicate factors like noise or interference with traffic flow, and nothing relating to the substance of the speech.
4. Speech activities should not be unduly restricted by “neatness” and “cleanliness” considerations. A school may require that students clean up after a rally or a leafleting. A school may not stop leafleting because of a general fear that students might not clean up afterwards. Of course, if a particular group has a demonstrated history of not cleaning up after its own mess, then modest restrictions might be in order—such as a monetary bond to cover the cost of a clean-up service. Only in light of past failures should a group be saddled with such pre-conditions.
5. Demonstrative activities should not be restricted in the name of aesthetics. It is reasonable to ask students to restore the campus area to its original condition after a large demonstration or leafleting (beyond normal wear and tear, which is a normal cost of operation for a university), but it is unreasonable to prohibit an expressive activity in advance for fear that it will make a mess or be unaesthetic. (This is related to No. 4, above.)
6. Virtually all universities already have the power, through existing rules, to prevent the type of disruptive conduct they might fear would take place. They can stop demonstrations that substantially impede the function of the university, block traffic flow, or prevent students from sleeping or studying. They can punish students who engage in vandalism or violence. The university also has increased power to regulate the presence of those speakers who have not been invited to campus and who are otherwise unaffiliated with the university. The university should not simply assume before the fact that student or faculty expression will be impermissibly disruptive. Rather, the university should accept its role as the ultimate free speech zone.

Please spare UNR the embarrassment of fighting against the Bill of Rights—a statement of both law and principle by which the university is legally and morally bound. We urge UNR to undo these unjust policies, and to tell the world that free speech at UNR is to be celebrated, honored, and broadened—not feared, restrained, and hidden. Let your students exercise their basic legal, moral, and human rights; let them speak, assemble, and protest as their consciences dictate.

FIRE is committed to using all of its resources to abolish the unconstitutional limits on freedom of expression at UNR. We request a response on this matter by April 14, 2006.

Sincerely,



Samantha K. Harris  
Program Officer

cc:

James E. Rogers, Chancellor, Nevada System of Higher Education

Bret Whipple, Chair, Nevada Board of Regents

John H. Frederick, Executive Vice President & Provost, University of Nevada, Reno

Ed Johnson, President, Graduate Student Association

Jeff Champagne, President, Associated Students of the University of Nevada

Annie Flanzraich, Editor, Nevada Sagebrush

Gary Peck, Executive Director, ACLU of Nevada

Allen Lichtenstein, General Consul, ACLU of Nevada