

F U N C T I O N I N G R E C E I V E D

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December 8, 2008

President Nancy L. Zimpher
Office of the President
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P.O. Box 210063

Cincinnati's Free Speech Area raises numerous constitutional concerns. First, on its face, the policy limits all expressive activities to the northwest section of McMicken Commons. A map of the university's West Campus reveals both that this is a very small area of campus and that there are numerous other greens, commons, lawn areas, and sidewalks where students should be able to exercise their expressive rights. The only possible defense of Cincinnati's policy is 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.

Second, Cincinnati's regulations regarding facilities use are impermissibly vague. The Free Speech Area policy threatens anyone who exercises their expressive rights outside of the Free Speech Area with a charge of trespassing. However, the next policy, on amplified sound, appears to permit sound amplification on other areas of campus. Since the Free Speech Area policy explicitly limits expressive activities to the northwest section of McMicken Commons, does this

cost of a clean-up service. Only in light of past failures should a group be saddled with such preconditions.

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 operations 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 the University of Cincinnati 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 Cincinnati to undo this unjust policy, thus making clear that free speech at Cincinnati is celebrated, honored, and embraced—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 the University of Cincinnati. We request a response on this matter by December 22, 2008.

Sincerely,



Samantha K. Harris
Director, Spotlight: The Campus Freedom Resource

cc:

Anthony J. Perzigian, Senior Vice President for Academic Affairs and Provost, University of Cincinnati

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