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March 12, 2007

President Larry E. Penley
Colorado State University
102 Administration Building
Fort Collins, CO 80523

Sent via U.S. Mail and Facsimile (970-491-0501)

Dear President Penley:

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 freedom of speech and expression on America's college campuses. Our web

2) The "Peaceful Assembly at CSU" policy, which designates just one area, the Lory Student Center Plaza, as "the 'Public Forum' space for Colorado State University—open to all individuals for the purpose of free speech," and requires students wishing to assemble to reserve the Plaza "at least 14 days in advance of the event."
3) The Residence Hall Handbook's "Advertising Policy," which prohibits the use of "offensive language" as well as any reference to alcoholic beverages or drugs.

We will address these policies in the order in which we have cited them above.

1) The Hate Incidents Policy: A public university such as CSU cannot lawfully ban "expressions of hostility." Under even the most rudimentary definition of freedom, people are allowed to be hostile. Only when those expressions cross the line into constitutionally unprotected harassment—i.e., when they are, in the words of the U.S. Supreme Court, "so severe, pervasive, and objectively offensive that [they] effectively bar[] the victim's access to an educational opportunity or benefit"—may a public university like Colorado State prohibit them. In fact, the Supreme Court has explicitly held on numerous occasions that speech cannot be restricted simply because it offends people. In *Street v. New York* (1969), the Court held that "[i]t is firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." In *Papish v. Board of*

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, Texas Tech University, and the University of Nevada at Reno. 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*

Please spare Colorado State the embarrassment of fighting against the Bill of Rights—a