



FIRE is a nonprofit educational foundation devoted to free speech, individual liberty, religious freedom, the rights of conscience, legal equality, due process, and academic freedom on our nation's campuses.

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# Foundation for Individual Rights in Education

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[theFIREguides.org](http://theFIREguides.org)



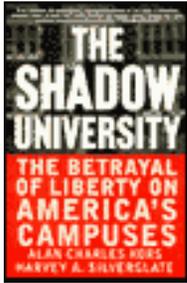
February 6, 2003

Donald Haragan  
Interim President  
Texas Tech University  
P.O. Box 42005  
Lubbock, Texas 79409

Dear President Haragan,

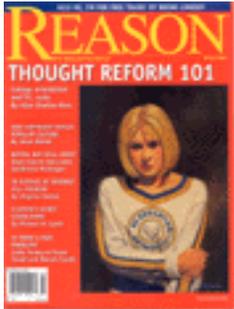
As you can see from our Directors and Board of Advisors, the Foundation for Individual Rights in Education (FIRE) unites leaders in the fields of civil rights and civil liberties, scholars, journalists, and public intellectuals across the political and ideological spectrum on behalf of liberty, legal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

FIRE is gravely concerned by the remarkably restrictive speech policies of Texas Tech University. The most surprising provision of this policy provides only one 20-foot wide gazebo as a "Free Speech Area." Protests, demonstrations, pamphleteering, speeches, and even the distribution of newspapers must all receive complex, prior, official approval if they occur outside of the "free speech" gazebo. Indeed, requests to engage in these basic activities outside of the "free speech" gazebo ***must be submitted at least six university working days before the intended use.*** [emphasis added] Students are required to get permits, which "specify the boundaries of the area to be used, the date for which the use is approved, the time at which the proposed activity may begin, the time at which the reservation for the use expires, and any special provisions concerning the use of the space."



Read excerpts from [The Shadow University](#) by Alan Charles Kors & Harvey A. Silverglate.

Texas Tech's nearly 28,000 students deserve more than 20 feet of freedom (approximately 1 foot of freedom per 1,400 students). This caricature of constitutional law should be anathema to any institution committed to intellectual rigor, robust debate, and a free and vibrant community. We call on you to tear down the barriers to speech and declare **all** of Texas Tech University a "free speech area."



Read [Thought Reform 101](#) by Alan Charles Kors.

We also write in support of the student groups who intend to protest peacefully outside the confines of the free speech gazebo. Please do not let an overly restrictive policy turn your own students into criminals for exercising what should be recognized as fundamental rights. Let them protest, as is their right protected by both the law and our country's noblest traditions.



Read [Memo to Free Speech Advocates University of Wisconsin-Madison](#) by Harvey A. Silverglate.

The irony of Texas Tech's strict regulation of speech and confining free speech to only one lonely gazebo is that the special function of the university as a whole, in any free society, is to serve as the ultimate "free speech area." A university serious about the search for truth should be seeking at all times to expand open discourse, to develop intellectual inquiry, and to engage and challenge the way people think. A university that is intolerant of the often messy reality of a free society is incapable of teaching students to live in freedom. By limiting free speech to a small fraction of the campus, you send the message that speech is to be feared, restrained, and monitored. This message is completely incompatible with a free society and stands in stark opposition to the ideals of higher education. You should remember, at all times, our Supreme Court's timeless expression of the important role of our universities in *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957):

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The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. ***To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.*** No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made ... Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must

always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.  
[emphasis added]

Texas Tech's actions in regulating free expression create the very "atmosphere of suspicion and distrust" against which the justices warned. The thoroughness with which Texas Tech controls basic free speech activities might be appropriate if Texas Tech were trying to teach their students to be obedient members of a private condominium association, but it is totally misplaced at an institution preparing students to be engaged citizens in a pluralistic democracy.

The only possible defense of the "free speech" gazebo 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 99.9 percent of your University's property—indeed, *public* property—into a "censorship area." The case law never intended to transform public institutions into places where constitutional protections are the exception rather than the rule. To be considered legal, "time, place, and manner" restrictions must be "narrowly tailored" to substantial governmental interests. A generalized concern about safety and order is neither specific enough nor substantial enough to justify this rule.

FIRE will see this process to a just and moral conclusion. Please spare Texas Tech University the embarrassment of fighting against the Bill of Rights by which it is legally and morally bound. We urge Texas Tech to show the courage necessary to admit its error, undo this unjust policy, and tell the world that free speech at Texas Tech 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 protest as their consciences dictate.

We trust you will make the right decision.

Sincerely,

Greg Lukianoff  
Director of Legal and Public Advocacy

Foundation for Individual Rights in Education

cc:

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**Because Your Liberty is a Precious Thing**

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