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In the Zone

At West Virginia University you can say anything you want--as long as you're standing in the Free-Speech Zone.

by Jonathan V. Last

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THE FIRST AMENDMENT is alive and well at West Virginia University. Or rather, it's alive and well in two small, outdoor areas of the WVU campus that the administration has cheerfully set aside as free-speech zones. As long as students are within these zones--which are available on a first-come, first-come, first-served basis--they can say whatever they want, pass out flyers, and even post unpopular signs.

The two free-speech zones are located near the student center, the Mountainlair, and are described by members of the university as being "roughly the size of a classroom." Professor Robert Griffith, who chairs a faculty senate commission that is reassessing the zones, estimates that about 50 people could fit in one zone while a little more than 100 could fit in the other. WVU has 22,000 undergraduates.

No one is quite certain where the free-speech zones came from. Griffith doesn't know when they were established, but, he says, "some of the older faculty claim that they've been here since the Vietnam days." Becky Lusted, director of News and Information Services at WVU, thinks they go back even further. "It's my understanding that they were established prior to the Vietnam war." The website for the WVU Free Speech Consortium suggests that they may have appeared after a demonstration following the Kent State shootings in May 1970.

But not only does no one on campus know when the zones were established--no one knows *how* they were established. There is no formal policy set forth by any administrative office. There is no legislative paper trail. The entire free-speech zone policy comes from a three-paragraph section of the student handbook, "The Mountie." Which makes it the perfect Orwellian law: It's ubiquitous and enforceable and no one is accountable for it.

And the zones are actively enforced. In October 1999, a Christian preacher was banished from Gay Pride Week for dissenting outside the zone. In March 2000, College Republicans were kept from passing out flyers in the student union during the school's Festival of Ideas. In November 2001, a student was removed from a Disney recruitment seminar after passing out anti-Disney pamphlets in the lobby beforehand. The university police cited his breach of the free-speech zone as the grounds for their intervention.

For the last two years a heterodox assortment of campus activists--including everyone from faculty members to the Students for Economic Justice to the College Republicans to the West Virginia Animal Rights Coalition--has been trying to get rid of the zones, yet they've been met with surprising resistance. Surprising, because, well, who's against free speech?

The answer, it turns out, is university president David Hardesty. After months of having their letters ignored, the free-speech advocates finally got Hardesty's attention when the [Foundation for Individual Rights in Education](#) got involved this past winter. (In fairness to Hardesty, there are a handful of others on campus who support the zones. In



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1991 the student board of governors voted against a symbolic measure to support free speech on campus. Explaining his "no" vote, governor Billy Coates, said, "I feel that we don't really know what would happen if we opened the campus up to free speech all around.") On February 11, Greg Lukianoff, FIRE's director of Legal and Public Advocacy, sent a [letter](#) to Hardesty requesting that WVU abandon the zones and adopt the First Amendment as the campus free-speech policy. Lukianoff argued that while "reasonable time, place and manner" restrictions were understandable, "we assure you that there is nothing 'reasonable' about transforming ninety-nine percent of your University's property--indeed public property--into 'Censorship Zones.'"

Lukianoff cited legal precedents for allowing free speech everywhere in the university and also touched on another important problem with the zones: By restricting speech to prescribed areas, they prevent it from being directed at its target, pace the Fourth Circuit's ruling in *Students Against Apartheid Coalition v. Virginia*. Hardesty, a Rhodes Scholar and graduate of Harvard Law School, reportedly dismissed FIRE's arguments as "legal mumbo-jumbo."

The next day, February 12, Hardesty met with members of Students for Economic Justice and announced that he intended to "liberalize" the zone policy. Why the sudden about-face? On the same day, WVU associate general counsel Beverly Kerr may have tipped the administration's hand. Appearing on West Virginia public radio, Kerr was asked about the constitutionality of the free-speech zones. "I really am going to decline to respond to that at this point. Certainly this is not an issue that needs to be in the press . . ."

So now that it is in the press, Hardesty seems to be backing away from the zones. In early April, the faculty senate commission will issue a recommendation to Hardesty. Griffith, who chairs the commission, says he would like to see the zones "done away with altogether." Then it will fall to the president to make a unilateral decision. Jettisoning the zones entirely seems unlikely. As one student told the campus paper, the Daily Athenaeum, "I'd like to be optimistic about what he says, but we have been waiting a long time. The Hardesty administration has shown its willingness to ignore this issue."

But who knows. Maybe President Hardesty will grant his charges First Amendment rights if he gets enough bad press.

[Jonathan V. Last](#) is online editor of The Weekly Standard.

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