This outcome is incompatible with CNU's legal and moral obligation to uphold the First Amendment. It has long been settled law that the First Amendment is binding on public universities such as CNU. See *Widmar v. Vincent*, 454 U.S. 263, 268–69 (1981) ("With respect to persons entitled to be there, our cases leave no doubt that the First Amendment rights of speech and association extend to the campuses of state universities"); *Healy v. James*, 408 U.S. 169, 180 (1972) (internal citation omitted) ("[T]he precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, 'the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools'").

CNU's refusal to allow groups to peacefully protest Representative Ryan's speech—despite the fact that the general public was not made aware of the visit until just two days before the speech—highlights the impracticality and unconstitutionality of a policy that makes no allowance for spontaneous activity or demonstration by students on the CNU campus. Rallies and demonstrations are often timely responses to unfolding events; to prohibit all such demonstrations on campus is to suppress free and open discourse on campus. Indeed, the immediacy of a message is often crucial to its efficacy, and requiring prior registration deprives students of the ability to convey their message with the desired urgency. Under CNU's policy, students gathering for an outdoor vigil, as many students did at Virginia Tech after the tragic shootings there in 2007, would be forced to wait 10 business days to share their grief. So would students protesting the sudden unpopular removal of a university leader, as students did at the University of Virginia just this summer following the controversial firing of President Theresa Sullivan. For that matter, so would students wishing to share their joy or frustration at the outcome of the 2012 presidential election.

Unfortunately, CNU's Demonstration policy presents further problems. The policy also limits "Demonstrations and Picketing"—core expressive activity—to a minuscule free speech zone in one single campus location:

> A demonstration is defined as the assembly of a group of persons to express their views on an issue. Picketing is defined as patrolling a building or area with or without carrying signs or handbills.
>
> […]
>
> Demonstrations and Picketing are limited to a designated area on the Great Lawn. The boundaries of this area are defined as approximately 20' x 20' on the west side of the David Student Union sidewalk and no closer than 20' to any adjoining sidewalk.
>
> Demonstrations or picketing within University buildings or at other location [sic] on the University campus is prohibited.

As an initial matter, it is critical to note that CNU's broad definition of "demonstration" is so vast as to sweep within its purview virtually all student expressive activity. Under CNU's

definition, any student that speaks his or her mind on any subject in conjunction with another student is engaged in a "demonstration," and thus must be confined to an infinitesimal segment of campus.

Limiting all demonstrations and picketing to this single "designated area" is unconstitutional. While public universities may impose reasonable "time, place, and manner" restrictions on student expression, such restrictions must be "narrowly tailored" to serve a significant governmental interest. *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)). There is nothing "reasonable" nor "narrowly tailored" about transforming the vast majority of the university's property—indeed, *public* property—into a censorship area by maintaining a system of onerous requirements by which CNU students and student organizations must abide in order to exercise their fundamental right to freedom of expression. The generalized concern for order that apparently underlies the establishment of CNU's free speech zone policy is neither specific enough nor substantial enough to justify limiting the vast majority of student speech to a single 20' x 20' area—an area constituting a shocking .00004% of the 260-acre CNU campus, one of the smallest such areas FIRE has encountered in our 13 years of defending student and faculty rights. Further, CNU's "designated area" is far removed from the Ferguson Arts Center where Representative Ryan's speech was held, so that even if the Feminist Alliance's event had been approved, their message would have had great difficulty reaching its target audience.

FIRE has successfully challenged the establishment of free speech zones at colleges and universities across the nation, including at the University of North Carolina at Greensboro, West Virginia University, Seminole Community College in Florida, Citrus College in California, Texas Tech University, and Tarrant County College in Texas. In all of these cases, the challenged institutions have either decided on their own to open their campuses to expressive activities or have been forced by a court to do so. Just last month, the University of Cincinnati was ordered by a federal district court to permanently abandon its "free speech zone" policy, which limited demonstrations to a tiny zone comprising just 0.1% of its main campus and—like CNU's policy—required students to give ten business days notice of any planned activity. See *University of Cincinnati Chapter of Young Americans for Liberty v. Williams*, No. 1:12-cv-155 (S.D. Ohio Aug. 22, 2012). CNU would do well to be aware of this ruling and others that make clear that CNU's policy violates the First Amendment rights of its students.

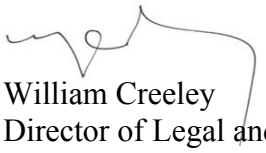
FIRE is aware that CNU administrators have scheduled a forum with CNU students in response to the controversy its unconstitutional actions here have caused. It is particularly urgent that CNU do so quickly, and change its policy promptly, so that students are free to express their opinions on campus without undue burden in the final weeks before casting their votes in the presidential election. As the Supreme Court has recognized, "speech concerning public affairs is more than self-expression; it is the essence of self-government," reflecting "our profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) (internal quotations omitted).

FIRE asks that Christopher Newport University immediately rescind its restrictions on student expression that, in this case, prevented numerous students from engaging in political protest—perhaps the central concern of the First Amendment.

While FIRE has much experience with challenging restrictive university policies, we also have a strong track record of working proactively with university administrators to bring wayward policies in line with the First Amendment. In fact, FIRE has successfully worked with three of CNU's fellow Virginia public institutions—the University of Virginia, The College of William & Mary, and James Madison University—to ensure that their speech policies fully protect First Amendment rights. We are happy to offer our assistance to CNU as well.

We request a response to this letter by October 8, 2012.

Sincerely,



William Creeley
Director of Legal and Public Advocacy

cc:
Kevin Hughes, Dean of Students
Frank Council, Director of Student Activities