

The First Amendment and Public Meetings

A Basic Introduction



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“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”

- JUSTICE BRENNAN, TEXAS V. JOHNSON

The First Amendment

The Freedom of Speech

The Freedom of Association

The Freedom of the Press

The Freedom of Religion

Freedom of Speech: the Basics

- 1) The freedom of speech is not absolute, and certain regulations of speech are permissible.
- 2) The first amendment only applies to government actions.

Freedom of Speech: the Forum

Three types of forums:

- 1) Traditional Public Forums
- 2) Limited Public Forums
- 3) Nonpublic Forums

Traditional Public Forums

Parks, sidewalks, and streets are forms of traditional public forums.

Traditional Forum Rules

- 1) Regulations are subject to strict scrutiny.
- 2) The burden is on the government to prove that its restrictions are narrowly tailored to meet a “compelling” government interest.
- 3) Any viewpoint-based restriction is unlawful.
- 4) Very difficult burden for the government to meet.

Limited Public Forums

School board meetings, and city council meetings are examples of limited government forums.

Limited Public Forums

The government body may create time, place, and manner restrictions that serve a significant government interest.

- Governments may never regulate viewpoints.
- Regulations must not be vague or overbroad.
- Governments must establish that their restrictions are:
 - Content neutral;
 - Narrowly tailored; and
 - Leave open alternative channels of communication.

Limited Public Forums

These are some permissible purposes for restrictions in public meetings.

- Most regulations addressing the length and efficiency of the meeting are deemed permissible.
 - Governments can regulate the number of speakers.
 - Governments can create time limits for each speaker.
 - Governments can create time limits for public participation generally.
 - Governments can limit speaking to certain times in a meeting.
 - Governments can ban disruptions to meetings – no megaphones permitted!!!!

Limited Public Forums

Content Neutral/ Viewpoint Discrimination

- Regulations cannot attack certain points of view, so a government cannot regulate criticism of itself in a forum.
- Recent Supreme Court cases have tightened this analysis in cases involving political signage and trademark registration.
 - *Reed*: Supreme Court suggests that if you cannot determine if speech violates the regulation without reading the message it conveys, it is likely content based.
 - Governments cannot regulate or silence speech because it is offensive to listeners.

Limited Public Forums

Regulations must be narrowly tailored.

- Should not restrict more speech than necessary to meet the government's permissible regulation.
- Some courts have understood this to mean that if time regulations meet the government's need for efficiency, then other regulations may be overly broad.

Traditional Public Forums

Governments must leave open alternative forms of communication.

- Theoretically speaking, in the year 2020, there are numerous alternative channels. However, the particular audience does matter. Thus, just because a person can criticize the government on her Facebook page, does not mean that a court will not hold the government responsible for depriving that person of access to a school board or its audience.

Limited Public Forums

Even if regulations pass the three-part test, governments cannot apply them to speakers differently based upon viewpoints.

Limited Public Forums

Common regulation: All public comments are limited to public participation. Public participation is limited to 30 minutes at the end of the board meeting. Each speaker who signs in is permitted to have 3 minutes of speaking time, so public participation is limited to 10 speakers per meeting. The first speakers to sign in will receive priority and speak first. To make sure all speakers have an opportunity to address the board, no speaker may speak more than once.

Limited Public Forums

Common myths:

- 1) Governments are not required to permit public speaking at public meetings.
- 2) Governments do not need to answer your questions.
- 3) Government officials are permitted to act like a jerk to you – they have first amendment rights too. Thus, if you are rude to a councilperson, and he or she is rude back – what goes around comes around.

Section 1983

If a government unlawfully silences your speech, removes you from a meeting, or enacts unlawful regulations of speech, a person with standing may bring an action against that government. If that person is successful, the government entity is often responsible for that person's attorney fees, costs, and other potential damages.

New Territory

The Facebook Problem

- Is it a government page?
- Is it a private page?