

# From Protests and Rallies to Employee Speech and Public Comment: The First Amendment's Impact on Cities

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# The First Amendment

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Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

## Article I, Section 8

No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

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# Case Studies



# Government Employee Speech

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*Barone v. City of Springfield*, 902 F.3d 1091  
(9th Cir. 2018)

City police officer was disciplined after she told the Springfield City Club that she had received reports of racial profiling.

Did the City violate her First Amendment Rights?

ANSWER: No.



# *Barone v. City of Springfield*

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How do we know whether an employee is speaking as a private citizen or a public employee?

## Five Questions:

(1) Did she speak on a matter of public concern?

(2) Did she speak as a private citizen rather than a public employee?

- Did she speak with a person with whom she would normally have contact at work?
- Does the speech interfere with the employer's regular operation?
- Was her speech pursuant to her official duties?

# Free Speech & Social Media



*Columbia Univ. v. Trump*, 1928 F.3d 226  
(2nd Cir. 2019)

The President of the United States continued to use his personal Twitter account after he came into office, and he blocked some followers, which is allowed under Twitter's terms of service.

Did the president violate the First Amendment?

ANSWER: Yes.

# *Columbia Univ. v. Trump*

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How do we know when a government official is using social media in his official capacity?

## Three Questions:

(1) How is the account described?

(2) To whom is the account made available?

(3) How do others, including government officials and agencies, regard and treat the account?

# Public Comment Sessions

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*German v. Eudaly*, No. 3:17-cv-2028-MO  
(D. Or. June 29, 2018)

A city council member and a city council meeting gadfly had a series of disagreements, which led to the city council member refusing to participate in council meetings while the gadfly was giving public comments.

Did the city council member violate the gadfly's First Amendment Right to petition the government?

ANSWER: No.





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# First Amendment Principles

# Viewpoint Discrimination

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- THE BIG ONE
- What it means: That the government cannot regulate speech on the basis of the viewpoint that the speaker supports.
  - Viewpoint discrimination is often referred to as “censorship.”
  - It is often the result of **noble** impulses, not nefarious ones.
  - It is **never** allowed.

# Examples of Viewpoint Discrimination

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| <ul style="list-style-type: none"><li>• Prohibiting some protests but allowing others</li><li>• Banning or removing commenters on city social media pages on the basis that they support or oppose a particular policy</li><li>• Selectively prosecuting only some political protesters</li><li>• Giving traffic tickets to drivers with bumper stickers supporting a certain party or candidate</li></ul> | <ul style="list-style-type: none"><li>• Banning political insignia for some groups but not others</li><li>• Restricting comments at public meetings to allow only certain viewpoints or perspectives</li><li>• Adopting an ordinance prohibiting certain offensive terms or slurs</li><li>• Prohibiting only certain groups from meeting in otherwise-available public spaces</li></ul> |
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# Time, Place, Manner

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- THE OTHER BIG ONE
- What it means: Laws that control when, where, and how speech can take place, regardless of what is being said.
  - Think of these restrictions as rules. Everyone has to follow them, regardless of the team they play for.
  - Time, place, manner restrictions are **always** okay...
  - ... as long as they apply the same to everyone.

# Religious v. Secular

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- The government must maintain a **neutral** position with respect to religion.
- What it means: Government cannot favor religion or inhibit it.
  - This rule is similar to viewpoint discrimination.
  - The idea is for everyone in the community to feel as if their government represents them, even if they don't practice whichever religion is most popular in that community.

# Questions?

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# Thank You

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