

First Amendment

A governmental entity, including a college district, shall take no action 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 Board for a redress of grievances. *U.S. Const. Amend. I, XIV*

Forum Analysis

“Traditional Public Forum”

A “traditional public forum” includes locations, such as sidewalks and parks, where members of the public have historically been permitted to gather and speak on any topic. *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788 (1985)*. An institution’s property is not a traditional public forum, with the exception of sidewalks, streets, and parks that are indistinguishable from surrounding city property. *Widmar v. Vincent, 454 U.S. 263 (1981)*; *Brister v. Faulkner, 214 F.3d 675 (2000)*

If an institution’s property is deemed a traditional public forum, the entity may exclude particular content if that entity can assert a compelling governmental interest that is narrowly tailored to address that interest, a standard referred to as the “strict scrutiny” standard. The institution can also enforce viewpoint-neutral time, place, and manner restrictions to meet a compelling governmental interest if a sufficient number of alternative communication channels are available. *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n, 460 U.S. 37 (1983)*

“Designated Public Forum”

A “designated public forum” is a forum that a college or university intentionally opens to the general public to discuss matters of public concern. *Cornelius v. NAACP Legal Def. and Educ. Fund, Inc., 473 U.S. 788 (1985)*. Once designated, an institution may enforce reasonable time, place, and manner restrictions. *Widmar v. Vincent, 454 U.S. 263 (1981)*. Any content limitations are subject to the strict scrutiny standard described above. *Chiu v. Plano Indep. School Dist., 260 F.3d 330 (5th Cir. 2001)*

“Limited Public Forum”

A “limited public forum” is a forum that an institution opens to a particular group of speakers or for discussion regarding a particular topic. *Christian Legal Society v. Martinez 130 S.Ct. 2971 (2010)*; *Rosenberger v. Rector & Visitors of Univ. of Va., 515 U.S. 819 (1995)*. Within a limited public forum, limits on expression must be viewpoint-neutral and reasonable in light of the purpose of the forum. The government may impose reasonable time, place, and manner restrictions, as long as these restrictions do not relate to the content of the expression. *Cornelius v. NAACP Legal Def. and Educ. Fund, Inc., 473 U.S. 788 (1985)*

To distinguish between a designated public forum and a limited public forum, courts consider two factors: (1) the intent of the insti-

tution regarding the forum, and (2) the forum's nature and compatibility with particular speech. *Justice for All v. Faulkner*, 410 F.3d 760 (5th Cir. 2005); *Chiu v. Plano Indep. School Dist.*, 260 F.3d 330 (5th Cir. 2001)

"Nonpublic Forum"

If an institution has not opened a public forum, it remains a "non-public forum". Although limits on expression must be reasonable and viewpoint neutral even within a nonpublic forum, an institution will have greater discretion to control the content of speech within such a forum. *Cornelius v. NAACP Legal Def. and Educ. Fund, Inc.*, 473 U.S. 788 (1985)

Protected Speech

The mere dissemination of ideas on the campus of an institution of higher education may not be restricted on the basis of conventions of decency, regardless of how offensive those ideas are to good taste. However, an institution has the authority to enforce reasonable regulations as to the time, place, and manner of speech and its dissemination. *Papish v. Bd. of Curators*, 410 U.S. 667 (1973); *Healy v. James*, 408 U.S. 169 (1972)

[See also CHE for use of the college district's mail system]