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Speech & Other "Expressive" Conduct

- ► Right-to-Know Law applies to deliberative session
- ► Who has the right to speak?
- ► Reasonable restrictions



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1st Amendment Cases

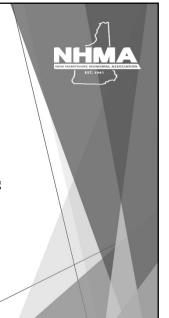
- ▶ Dayton v. Estari (Ohio)- Regulation of "expressive conduct" not permissible unless it is accompanied by other impermissible conduct.
- ▶ Norse v. City of Santa Cruz- Government officials in America must occasionally tolerate offensive and irritating speech.

► Cohen v. California- Citizens have the right o express their opinions and criticisms, even if the speech is foolish and without moderation.

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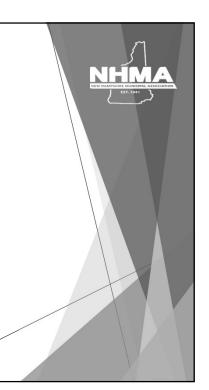
Artus v. Town of Atkinson

- ► To state a viable claim of First Amendment retaliation, a plaintiff must show that the defendant intended to "chill his expression".
- ► The defendant's actions must be such that it would curb the expression of a "reasonably hardy individual".
- ▶ Moderators are protected by "Legislative Immunity" when they are enforcing rules to keep the proceedings in order.
 - ▶ No person shall speak in any meeting without leave of the moderator
 - ▶ All persons shall be silent at the desire of the moderator
 - ▶ Is any person persists in disorderly behavior after a warning from the moderator, the moderator may command that person to be removed.



652:16-h Electioneering Definition

Electioneering means visibly displaying or audibly disseminating information that a reasonable person would believe explicitly advocates for or against any candidate, political party, or measure being voted.

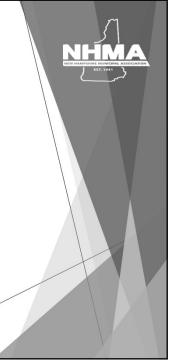


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Electioneering At Polling Places - RSA 659:43

- ► Electioneering shall be prohibited within the polling place building.
- ► Establish one or more no-electioneering corridors, no less than 10 feet wide, that extend from all entrances of the polling place
- ➤ Voter must be allowed to enter polling place building without interference from individuals outside the corridor.
- ► Moderator shall designate a preferred area for electioneering
- ➤ The distribution or posting of electioneering communications, including but not limited to posters, cards, handbills, placards, pictures, pins, stickers, circulars, or articles of clothing, is prohibited within any no-electioneering corridor established outside the polling place by the moderator.

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Attorney General Recommendations on handling electioneering speech*

- ▶ Upon observing a voter enter the polling place to vote wearing electioneering campaign material, it is reasonable to ask the voter to remove or cover up campaign material being worn.
- ▶ It is recommended, that local election officials keep spare shirts or inexpensive rain ponchos on hand to offer voters to cover unlawful attire.
- ▶ However, should the voter refuse, he or she must be allowed to vote.
- ➤ The proper response if the person is unwilling to cease the improper conduct is to refer the voter to the Attorney General's office for investigation.

* New Hampshire Election Procedure Manual 2020-2021, page 248

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VIEW POINT DISCRIMINATION AND TABLES FOR NON-PROFITS AT TOWN MEETING VOTE DEMOCRATIC

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