


Freedom of Speech

Jonathan E. Cowal, Esq.

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Electioneering at Polling Place

- 262:32; 652:16-h; 659:43; 659:44 clarify electioneering
- Establish one or more no-electioneering corridors at each entrance to the polling place.
- Designate a preferred area for electioneering. Prohibit affixing electioneering signs to the building or grounds and leaving electioneering signs unattended.
- Authorized official can remove a vehicle that has been parked or left unattended on election day for longer than three hours in an area designated for voters.

2

Bauer v. Leach

- ▶ An individual was arrested for disorderly conduct at a school board meeting.
- ▶ The court listed a few factors to consider in determining whether or not there is probable cause to arrest someone for Disorderly Conduct based on their behavior at a public meeting under RSA 644:2,III.
 - ▶ Length of time of the disruption
 - ▶ Type of disruption
 - ▶ Multiple attempts to regain order
 - ▶ Violation of rules governing public comment session multiple times
- ▶ The First Amendment's guarantee of free speech does not alter the factors to be considered when determining if there was probable cause to arrest someone for disorderly conduct.



3

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.



4

Houston Community College v. Wilson



- ▶ A member of the Board of Trustees for HCC was censured by the board for inappropriate comments he made.
- ▶ As a general rule, the US Supreme Court observes that the First Amendment prohibits government from subjecting individuals to retaliatory actions after the fact for having engaged in protected speech.
- ▶ The court looked to the nature of the censure and found it was not defamatory, did not prevent Wilson from doing his job or deny him any privilege of office, and it didn't materially deter him from exercising his right to speak. He

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



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Tips for Avoiding Issues



- ▶ Have rules in place ahead of time and make sure they are well known.
- ▶ Written policies that are clear and established make a big difference!
(*Shurtleff v. City of Boston*)
- ▶ Provide ample opportunity to let people calm down and choose to abide by rules.
- ▶ If you are going to have someone removed, make sure that a peace officer witnessed their conduct.