

Southwest Arts Conference
Know Your First Amendment Rights

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I. Does the First Amendment apply?

“Congress shall make no law . . . abridging the freedom of speech, or of the press”

II. Who is the speaker?

III. Is your art a form of speech protected by the First Amendment?

- A. Political speech
- B. Expressive conduct
- C. Obscenity
- D. Pornography
- E. Incitement and advocating violence
- F. Defamation/libel/invasion of privacy
- G. Violation of intellectual property rights/fair use
- H. Commercial speech

IV. Are you speaking on government property?

- A. Forum categories
 - 1. Traditional public forum.
 - 2. Designated public forum.
 - 3. Limited public forum.
 - 4. Non-public forum.
 - 5. Examples:
 - “Sex, Laws and Coat hangers” at federal building in Raleigh.

- i.e., compelling interest in preventing dissemination of child pornography, compelling interest in promoting human rights of groups that have been traditionally discriminated against (RAV v. St. Paul).

B. Time, place, and manner restrictions in the public forum

V. Is your art funded by the government?

A. Restrictions that apply to arts funding include:

1. National Endowment for the Arts grants: “artistic excellence and artistic merit” taking into consideration standards of “decency and respect.” 20 USC § 954(d)(1).
2. Arizona Arts Commission funding: “Notwithstanding any law to the contrary, no monies from the Arizona arts endowment fund may be spent for payment to any person or entity for use in desecrating, casting contempt on, mutilating, defacing, defiling, burning, trampling or otherwise dishonoring or causing to bring dishonor on religious objects, the flag of the United States or the flag of this state.” A.R.S. § 41-986(G).
3. But:
 - Rosenberger v. UVA: Student activity fund could not discriminate on the basis of viewpoint (i.e., Christian newspaper). NEA case didn’t persuasively distinguish Rosenberger, saying that arts funding is necessarily limited and Congress’s spending power is in play.
 - City of Tucson v. Gentala: National Day of Prayer supporters sue City for access to the special events fund. Court follows Rosenberger case and distinguishes Finley’s subjective guideline.
 - Brooklyn Institute of the Arts v. City of NY (1999). Overturned the City’s withdrawal of funds over an offensive display, distinguishing Finley and saying that the City’s act was viewpoint discrimination.
 - Amtrak and Washington Metro examples.

B. Can the government refuse funding?

C. Can the government prohibit “offensive” displays in public?

D. Can the government prohibit offensive speech in public broadcasts?

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