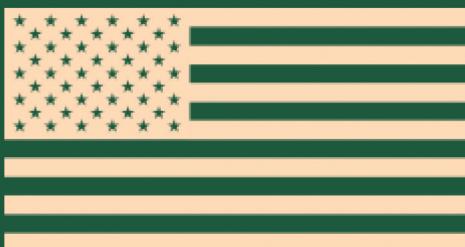


THE SELF-HELP GUIDE TO THE LAW

Know Your
Constitutional
Rights



J. D. Teller, Esq.



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Self-Help Guides to the Law™ explain the law in clear, concise terms to a popular audience of non-lawyers. Summarizing the key areas of the law with which readers are most likely to come into contact, the *Guides* broadly outline the statutes and cases that govern landlord-tenant relations, personal injury, contracts, family law, criminal law and constitutional law and procedure.

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- The Self-Help Guide to the Law: Property Law and Landlord-Tenant Relations for Non-Lawyers
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- The Self-Help Guide to the Law: Know Your Constitutional Rights
- The Self-Help Guide to the Law: Criminal Law and Procedure for Non-Lawyers

About the Imprint

With a focus on international and comparative law, the JuraLaw™ imprint publishes monographs exploring public and private international law and overviews of the laws of various nations.



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ABBREVIATIONS

A	Grantee (for present estate/ future interest hypotheticals)
AGI	Adjusted gross income
AP	Adverse possession
B	Buyer
C	Constitution
CIF	Cause-in-fact
Cl.	Clause
CLEO	State Chief Law Enforcement Officer
Court (cap.)	United States Supreme Court
CP	Court of Pleas (UK)
CR	Contingent remainder
CSD	Common Scheme of Development
CSI	Compelling state interest
Ct.	Court
Ct. App.	Court of Appeals
Ct. Chan.	Court of Chancery (England)
ED	Emotional distress
EI	Executory interest
Eng.	England
ES	Equitable Servitude
FLSA	Fair Labor Standards Act
FMLA	Family and Medical Leave Act
FQJ	Federal question jurisdiction
FRAP	Federal Rules of Appellate Procedure
FRCP	Federal Rules of Civil Procedure
FRCrP	Federal Rules of Criminal Procedure
FRE	Federal Rules of Evidence
FS	Fee simple absolute (fee simple)
FSCS	Fee simple on condition subsequent
FSD	Fee simple determinable
FS EL	Fee simple on executory limitation
FT	Fee tail
H.L.	House of Lords (England)
JMOL	Judgment as a matter of law
JNOV	Judgment non obstante veredicto
JT	Joint tenant/tenancy
K	Knowledge (criminal law) or Contract (all other law)
K.B.	King's Bench (UK)
L	Loss in value
L1	First landlord
Lat.	Latin
LE	Life estate

LED	Life estate determinable
LLC	Limited liability company
LLP	Limited liability partnership
LRM	Least restrictive means
MPC	Model Penal Code
MSAJ	Motion to set aside the judgment
N.B.	Nota bene
O	Original owner, or grantor (in present estates and future interests)
P	Purpose or purchaser
PJ	Personal jurisdiction
PJI	Pattern Criminal Jury Instruction
Q.B.	Queen's Bench (UK)
R	Recklessness
RAP	Rule against perpetuities
RC	Real Covenant
Restatement	Restatement (of Contracts, Torts, Judgments, etc.)
RFRA	Religious Freedom Restoration Act of 1993
RLUIPA	Religious Land Use and Institutionalized Persons Act
RPP	Reasonable prudent person
Rule	Federal Rule of Evidence or Federal Rule of Civil Procedure
§	Section
S	Sublessee or seller
S.Ct.	Supreme Court or U.S. Supreme Court Reporter
SJ	Summary judgment
SMJ	Subject matter jurisdiction
SP	Specific performance
T1	First tenant
TE	Tenant/tenancy by the entireties
UCC	Uniform Commercial Code
US	United States of America or United States Reports (compilation of U.S. Supreme Court opinions)
USC	United States Code
VR	Vested remainder
VR SD	Vested remainder subject to divestment

CHAPTER 1. FIRST AMENDMENT SPEECH

I. OVERVIEW

The First Amendment states, “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.”

II. PRIOR RESTRAINT AND CRITICISM OF THE GOVERNMENT

A *prior restraint* is an administrative requirement or judicial order that suppresses speech *before it is published* or otherwise made.

There is a strong presumption against prior restraints, which the government generally may not issue, because they put too much power into the hands of officials granting licenses.

In order to prevent the publication of materials that it considers threatening to national security, the government must meet a *heavy burden of justification* (similar to strict scrutiny).

See New York Times Co. v. United States (U.S. 1971) (*per curiam*), where the government sued to enjoin the New York Times from publishing a classified study on U.S. policy in Vietnam (the Pentagon Papers). Held: the proposed government action must be a narrowly tailored means (similar to LRM) to pursuing a compelling state interest, which the government failed. The government has failed to meet its heavy burden of justification.

Concurrence (White, J.): there was no clear showing of an emergency and no statute supports the plaintiff's position.

Dissent (Burger, C.J.): this Court is deciding too hastily a case whose facts require more time for analysis.

III. PUBLIC FORUMS: THE THREE CATEGORIES OF GOVERNMENT-OWNED PROPERTY

A. Traditional Public Forums

These forums have traditionally been used for public expression. Examples include sidewalks, streets, and public spaces in front of city halls.

If the government imposes a *time, place, and manner restriction* that is *content neutral* (does not regulate the subjects to be addressed) and *viewpoint neutral* (does not regulate the perspectives advocated),¹ intermediate scrutiny applies.

Example: a regulation prohibiting the use of amplifiers after 9 p.m.

If a restriction is content-based, it is subject to *strict scrutiny*.

B. Designated Public Forums

1. Overview

These forums are opened up by the government for the *specific purpose of allowing for public expression* (e.g., an auditorium opened up to the public).

Like traditional public forums, the *strict scrutiny* test (LRM to a CSI) is applied. However, in contrast to traditional public forums, designated public forums may be closed down completely.

Time, place, and manner restrictions are subject to intermediate scrutiny.

2. Limited Designated Public Forums

A designated public forum may be opened by the government for a limited purpose (e.g., a public forum at a public school for school groups only). The restrictions must be *content* and *viewpoint neutral*.

A school may not, for example, discriminate against a school group because it is religious.

C. All Remaining Government Property

Remaining government property includes the Houses of the Senate and Congress, the Oval Office, naval bases, and the like.

¹ A restriction based on the viewpoints expressed is never permitted.

When the government restricts speech in these places, the ***rational basis test*** is applied and the ban needs only to be rationally related to a legitimate state interest.

The restrictions must be reasonable and not viewpoint-based.

See International Society for Krishna Consciousness, Inc. ("ISKCON") v. Lee (U.S. 1992) (Rehnquist, J.), where the plaintiffs "ISKCON" challenged a regulation prohibiting the distribution of literature and the solicitation of money in airports. Held: airports have not been historically available for the expression of free speech and are ***neither traditional nor designated public forums***. The government thus only needs a ***rational basis*** to restrict speech. Since solicitation in airports may cause disruptions and delays, it may be prohibited. However, *the distribution of literature is permitted*.

Dissent (Souter, J.): airports fit the archetype of traditional public forums. Strict scrutiny should have therefore applied.

IV. GOVERNMENT SPEECH

Government must allow all viewpoints equal access when it creates a forum, *not when the government undertakes speech*. The government may endorse and express certain viewpoints without expressing alternate viewpoints.

When government undertakes speech by subsidizing one constitutionally-protected category of programs, it is not required to equally fund other related constitutionally-protected programs.

See Rust v. Sullivan (U.S. 1991) (Rehnquist, C.J.), where a federal statute *subsidized family planning clinics*, but prohibited doctors of the clinics from even discussing abortion with clients. The statute was held to be constitutional, even though abortion is constitutionally protected: the government need not subsidize every constitutionally protected program just because it subsidizes one.

Thus, citizens may be compelled to fund government speech. However, government may not compel citizens to carry, support, or adopt its speech.

See Wooley v. Maynard (U.S. 1977), where the motto "Live Free or Die" on N.H. license plates was held to be an impermissible compulsion of expression.

Furthermore, private law schools may be compelled by the government to allow military recruiters onto their campuses even if the law schools disagree with the policies of the government and of the recruiters.

See Rumsfeld v. Forum for Academic and Institutional Rights, Inc. ("FAIR") (U.S. 2006), where Congress, in passing the Solomon Act, required law schools to give military recruiters the same rights that other recruiters had on their campuses, despite many law schools' opposition to the military's homosexuality policy. The law schools challenged the act and the Court held that: (i) the statute did *not* require the plaintiff to engage in speech; (ii) the fact that schools were letting recruiters on campus to speak with students did *not* mean that the schools were being compelled to support the government speech; and (iii) Congress was *not* prohibiting expressive conduct, since exclusion of the recruiters could be interpreted to mean, *inter alia*, the recruiters decided not to come that year.

V. TERMINATION OF PUBLIC EMPLOYEES AS A RESULT OF SPEECH

Private employers have free reign in telling their employees what they may and may not talk about on the job. Normally, such employees have no legal recourse.

The government, however, is *bound by the First and Fourteenth Amendments* when dealing with employees.

The government may not restrict the speech of its employees when they speak as citizens on matters of public concern. The speech, when balanced against the interests of employers, must not be very harmful.

However, there is *no constitutional protection* for the speech of government employees undertaken within the scope of their employment.

See Garcetti v. Ceballos (U.S. 2006), where the plaintiff Ceballos, a deputy district attorney, questioned via intra-office memorandum an affidavit used to obtain of a warrant. Claiming that his employer retaliated by firing him, the plaintiff sued. Held: the plaintiff is not protected under the First Amendment, because his speech was made pursuant to his official capacity: he was speaking not as a citizen, but as an employee. Factors to consider: the conversations occurred inside the office rather than in the public (not dispositive); it