

The First amendment and political speech

The First Amendment protects a person's right to communicate ideas, information, and opinions free of government restraint, but it does not protect a person who wishes to incite riot, commit assault, or destroy the property of others nor does it authorize trespass or deprivation of the rights of others. Individuals affiliated with Moveon.org and Black Lives Matter are engaged in criminal incitement and are countenancing physical assaults and deprivation of and destruction of private property at Donald Trump rallies. Those are criminal actions, not protected speech.

When a politician pays for a forum and invites supporters to attend a rally, that public event is not an invitation to riot, obstruct the planned speakers and events, or destroy property. Indeed, those attending are admitted on conditions. They are admitted if they will occupy a seat and avoid obstructive actions. They are guests of the speaker and the sponsor of the event. If they incite riot, commit assaults, or destroy property, they are appropriately arrested, charged, and prosecuted. The First Amendment is not a shield for illegal action.

If the event is held on private property that is made open to the public for the purpose of allowing a political speech to a candidate's supporters, the property owner retains the right to control the forum, determine who is allowed to speak and what may be said. That right is one of editorial control and is vested in the person who owns the forum to the exclusion of all others. That right has been a freedom of the press since the founding of the republic. Consistent with the First Amendment, there is no super-editorial power in government to deny the forum owner the power to determine the content communicated via his own property. Consequently, the New York

Times may editorialize in liberal ways deemed offensive to some conservatives, just as the Washington Times may editorialize in conservative ways deemed offensive to some liberals. That is the essence of the freedom of the press. As a result, the private forum owner may expel any attendee who trespasses, any attendee who obstructs the planned event, or any attendee who commits an assault. He may do so confident in his First Amendment right, which in this case inures to protect him in his right to editorialize, to sponsor and promote the political views, with which he agrees.

If the event is held on public property that is within the confines of a stadium or a building, the government is barred by the First Amendment from engaging in viewpoint or content discrimination but not from imposing reasonable time, place, and manner restrictions. Consequently, if the government owner of the public property wishes to allow Donald Trump to use the facility to speak to his supporters, the government may prohibit actions that obstruct Trump's right to speak and the audience's right to hear, so long as the government makes reasonable accommodation for those who wish to speak in opposition to Trump.

Ordinarily, this involves adoption of a content neutral system for allowing the public forum to be made available to alternative speakers and their supporters on different days, and allowing the public streets and parks outside of the government facility to be available for presentation of competing speeches and protest, again subject only to reasonable time, place, and manner restrictions (such as preventing assemblies that block traffic, block ingress and egress from buildings, or prevent the normal operations of government or private businesses).

The crowds of college youth, often supported by university faculty, who condemn any viewpoint with which they disagree and act on that condemnation by shouting down speakers, destroying private property, and committing assaults are

criminals and thugs who ought to be arrested. They have an undoubted First Amendment right to their own viewpoints and a right to communicate those views in places held from time immemorial for public protest (the streets and parks), but they have no First Amendment right to obstruct political addresses in forums reserved for that purpose, to attack those who support the speaker, or to destroy the property of those who support the speaker. That activity is indeed criminal, and the appropriate response is to arrest the perpetrators, prosecute them, and incarcerate them as the law allows.

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