

FREE SPEECH

Protected Speech

Strict scrutiny:

- ★ NECESSARY to protect a
- ★ COMPELLING government interest &
- ★ NARROWLY TAILORED

Extra Protections

Prior Restraint

- ★ HEAVY GOV'T BURDEN to prove publication will cause
- ★ SPECIAL SOCIETAL HARM and defendant is protected by
- ★ PROCEDURAL SAFEGUARDS narrow, reasonable, & definite

Content Restrictions

Overbreadth

- ★ SUBSTANTIAL AMOUNT of protected speech banned, or
- ★ UNLIMITED DISCRETION given to officials, then
- ★ FACIALLY INVALID and
- ★ NOT ENFORCEABLE even against non-protected speakers

Unprotected Speech

Obscenity

- ★ PATENTLY OFFENSIVE in terms of challenged law
Contemporary community standard
- ★ APPEALS TO PRURIENT INTEREST IN SEX
Contemporary community standard
- ★ NO SERIOUS REDEEMING VALUE
Literary, artistic, political, or scientific. Nat'l stndrd.

Vagueness

- ★ NO REASONABLE NOTICE of what is prohibited, then
- ★ VOID FOR VAGUENESS doctrine will be
- ★ STRICTLY APPLIED to prevent chilling effect

Fighting Words / Incitement

- ★ INTENDED TO INCITE unlawful activity
- ★ LIKELY TO SUCCEED in inciting
- ★ VOID IF OVERBROAD OR VAGUE

Conduct Restrictions

Communicative Conduct

- ★ IMPORTANT government interest advanced, that is
- ★ UNRELATED TO SUPPRESSION of speech, and
- ★ NO GREATER THAN NECESSARY incidental effect

Low-Value Speech

Commercial Speech

- ★ FRAUD / ILLEGALITY NOT PROTECTED
- Truthful / Lawful Ads:
- ★ SUBSTANTIAL gov't interest served by restriction, that
- ★ DIRECTLY ADVANCES the interest and is
- ★ NARROWLY TAILORED

Time, Place, & Manner

Public Forums

Traditional & Designated

- ★ CONTENT-NEUTRAL restriction, that is
- ★ NARROWLY TAILORED to advance a
- ★ SIGNIFICANT or IMPORTANT government interest, with
- ★ NO DISCRETION by officials, and
- ★ LEAVES ALTERNATIVE channels open for communication

Defamation

- ★ PUBLIC FIGURES & PUBLIC MATTERS:
CONSTITUTIONAL LIMITATIONS
- No recovery unless:
- ★ FALSE STATEMENT OF FACT
- ★ FAULT REQUIRED:
Private person, public concern: Negligence
Public figure: Malice (knowledge or recklessness)

Non-Public Forums

- ★ VIEWPOINT-NEUTRAL (ban on general subject area OK), and
- ★ REASONABLY RELATED to a
- ★ LEGITIMATE government purpose