

# FREE SPEECH PROTEST & PUBLIC SAFETY

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# THE RIGHT TO PROTEST IS PROTECTED BY BOTH TX & U.S. CONSTITUTIONS

- Protest = Right to Assemble
- **The First Amendment of U.S. Constitution**
  - “Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble.”
- **Article I, sections 8 & 27 of Texas Constitution**
  - protections guaranteeing the “liberty to speak, write or publish ... opinions on any subject,” and “the right ... to assemble.”



# WHAT DO THESE ASSEMBLY PROTECTIONS COVER?

- People's right to march, leaflet, parade, picket, circulate petitions, ask for signatures, other forms of peaceful protest
- These rights guaranteed for any view/topic – regardless of how unpopular or controversial
- Despite the strong protections, *how* these rights are exercised may be regulated



# LIMITS TO SPEECH & RIGHT TO ASSEMBLE

- Supreme Court has determined certain categories of speech fall outside First Amendment Protections:
  - Obscenity
  - Defamatory language – false and intended to harm the reputation of another person
  - Speech that incites imminent lawless action – “fighting words”



# MUNICIPALITIES ALLOWED TO REGULATE PROTECTED SPEECH/ASSEMBLY

- Restrictions of “time, place, and manner” permissible
- Cannot be dependent on subject of speech, but on way expressed
- Best practice restrictions tailored to preserve public order (keeping demonstrators out of heavy traffic)
- Any regulation must be: “narrowly tailored to serve a significant government interest”; content-neutral; and leave open ample alternative channels of communication



# CITY MUST ALLOW PROTEST IN CERTAIN PLACES

- Court-prescribed “forums” of permissible protest:
  - **Public streets, sidewalks, and parks** – have long tradition of assembly and debate & governmental regulation of speech here is very limited
  - **Areas specifically opened for speech** – where government has specifically designated them for some public discourse, like City Council Chambers
    - Still have intermediate level of protection from regulation: disruptions can be stopped, limited to certain times, etc.



# CITY MUST ALLOW PROTEST IN CERTAIN PLACES, CONTINUED

- Court-prescribed “forums” of permissible protest, cont.:
  - **‘Private’ government property** – city-owned property leased to a private group
    - Although technically public property, does not qualify as a public forum
    - Government may restrict speech there if restrictions are *reasonable* and *not viewpoint-based*



# PRIVATE PROPERTY OWNERS PROTECTED

- Private property owners can control what happens on their land & prevent protestors from entering
- But adjoining public property (streets & sidewalks) open for public protest
- Property owners also allowed to post signage and other free-speech or political messages on own land; City very limited in regulating campaign-type signs, other “public interest” messages on private property





# PERMIT REQUIREMENTS

- Court-approved requirements allow permit request to be made certain number of days before event, but deadlines must not be so unreasonable as to burden rights
  - (e.g., courts have held 10 days ahead = burden of expression)
- Permit Fees allowed – can't be arbitrary or imposed to discourage applications; fees must *only* cover administrative expenses associated with application and permit
- Permit review – City must maintain concrete standards (“narrow, objective, and definite”) in regulating review of applications



# MUNICIPAL RIGHT TO DISPERSE PROTEST

- Must be law enforcement's last resort
- Police may not break up a gathering unless there is a *clear and present danger* of riot, disorder, interference with traffic, or other immediate threat to public safety
- A dispersal order must provide a reasonable opportunity to comply—with sufficient time & clear, unobstructed exit path
- Notice of dispersal order must be clear and detailed before resorting to arrest/charges: how much time to disperse; consequences of failing to disperse; what clear exit route can be followed

