



# Navigating the Intersections Between Libraries and the First Amendment

Louis D. Kelly  
Commonwealth's Attorney  
54<sup>th</sup> Judicial Circuit

# Objectives

- Review legal issues involving the First Amendment;
- Illustrate how those issues apply to Libraries;
- Discuss policies and practices to ensure compliance.

# Why should I care?

- Complying with First Amendment requirements will help libraries by:
  - Helping to fulfill the traditional mission of facilitating learning and cultural enrichment.
  - Instilling and reaffirming the public's belief that the library is a valuable community resource available to all individuals.

# Why should I care?

- Failure to comply with First Amendment requirements can hurt the library by:
  - Creating negative public perceptions that libraries are politically or ideologically biased which can impact both patron attendance and funding.
  - Making libraries vulnerable to legal challenges which can result in damage awards and attorneys' fees.

**WE THE PEOPLE**  
insure domestic Tranquility, provide for the common  
and our Posterity, do ordain and establish this Const

**Article 1.**  
Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a  
Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several  
in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.  
No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a  
and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.  
Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, as  
Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of  
and three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of  
sequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall be made, the State  
shall have at least one Representative; and until such Enumeration shall be made, the State  
shall have at least one Representative; and until such Enumeration shall be made, the State  
shall have at least one Representative; and until such Enumeration shall be made, the State

## The First Amendment

- "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."

# Key Terms

- Content-based restriction.
- Viewpoint restriction.
- Reasonable time, place, and manner (TPM) restriction.
- Traditional public forum.
- Limited public forum.
- Nonpublic forum.

# Key Terms

- Content-based restriction:
  - A government restriction on speech that is based upon the substance of what it communicates.
  - Subject to “strict scrutiny.”
  - Must be “narrowly tailored” to advance a “compelling government interest.”
  - Rarely survive judicial review.
- Examples:
  - Prohibiting religious student organizations on college campus. (Not allowed)
  - Prohibiting electioneering within certain distance from polling location. (Allowed, under certain conditions)

# Key Terms

- Viewpoint Restriction:
  - Prohibiting speech based upon the group's viewpoint.
  - Subject to "strict scrutiny."
  - Presumed unconstitutional.
- Example:
  - Allowing Republican and Democrat party meetings in a public space, but denying same access to Green party.



# Key Terms

- Reasonable time, place, and manner (TPM) restrictions:
  - Regulations on the time, place, and manner of an event.
  - Content-neutral.
  - Designed to serve a government interest.
  - Leaves ample alternative channels for expressive activity.
- Example:
  - Prohibitions on amplification or unreasonable noise.
  - Restrictions on length of time for room use or reservations on consecutive days.

# Key Terms

- Traditional Public Forum:
  - Government property that has been traditionally available for public expression.
  - Example: streets, sidewalks, parks.
  - Given the highest First Amendment protections.
  - Government can make reasonable TPM restrictions.

# Key Terms

- Limited Public Forum:
  - Property that the government has opened for expressive activity.
  - Government can restrict speech to retain the designated property's purpose.
  - Reasonable TPM restrictions allowed.
  - Libraries fall within this category.
  - Traditional public forums can exist within LPF based on expressed intent or established practice.

# Key Terms

- Nonpublic Forum:
  - Public property not opened for purpose of expressive activity.
  - Example: County administration building.
  - Reasonable speech restrictions allowed as long as no attempt to suppress because of disagreement with speaker's viewpoint.

# Internet Censorship

- Can libraries ban access to certain websites without violating the First Amendment?
- U.S. v. American Library Association, 539 U.S. 194 (2003)
  - “To fulfill their traditional missions, public libraries must have broad discretion to decide what material to their patrons.”
  - “Although they seek to provide a wide array of information, [library’s] goal has never been to provide ‘universal coverage.’”
  - “Internet access in public libraries is neither a ‘traditional’ nor a ‘[limited]’ public forum.”

# Restricting Access to Individuals

- Kreimer v. Morristown, 958 F.2d 1242 (3<sup>rd</sup> Cir. 1992)
  - Homeless man was expelled from library on two occasions for violating policies that prohibited disruptive conduct and offensive hygiene/odor.
  - Man challenged that policies violated First Amendment.
- Court findings:
  - Access to information protected by First Amendment.
  - Library is limited public forum.
  - Regulations were valid TPM restrictions as they were: (1) content neutral; and (2) allowed library to retain its designated purpose of providing quiet place to read and research.

# Meeting Rooms

- What restrictions can libraries place on use of meeting rooms?
  - Reasonable TPM restrictions.
  - No content or viewpoint-based restrictions.
  - Equal access must be provided to any group that abides by TPM restrictions. This includes groups libraries may find morally objectionable.

# Meeting Rooms

- Must avoid creating facial TPM restrictions that are, in fact, designed to prohibit certain content.
- Example:
  - Local political parties want to use library meeting rooms for organizational meetings.
  - Library does not want political activities on its premises.
  - Political groups regularly request rooms after 5pm.
  - Library enacts policy that meeting rooms are no longer available for use after 5pm which has the effect of prohibiting political groups from using its rooms.



# Commercial Speech

- Speech designed to advance commercial interests.
- Limited protections under First Amendment, but not as protected as non-commercial speech.
- Misleading or false commercial speech has no protections under First Amendment.

# Commercial Speech

- Truthful commercial speech can be regulated as long as:
  - The regulation directly advances a substantial government interest.
  - Regulation is no more extensive than necessary to serve that interest.
  - Example: prohibiting commercial solicitation of patrons on library premises to advance public interest of maintaining quiet space to read and research.
  - Prohibitions on commercial use of meeting rooms must be applied consistently so as to not be deemed content-based.

# Policy Recommendations

- All policies relating to patron behavior and access to meeting rooms should be content and viewpoint neutral.
- Policies on patron behavior should be geared towards promoting library's core mission and purpose. (Ex., maintaining appropriate environment for reading and research)
- Policies on meeting rooms should state that granting access to meeting rooms does not constitute library's endorsement of group's beliefs.

# Questions?

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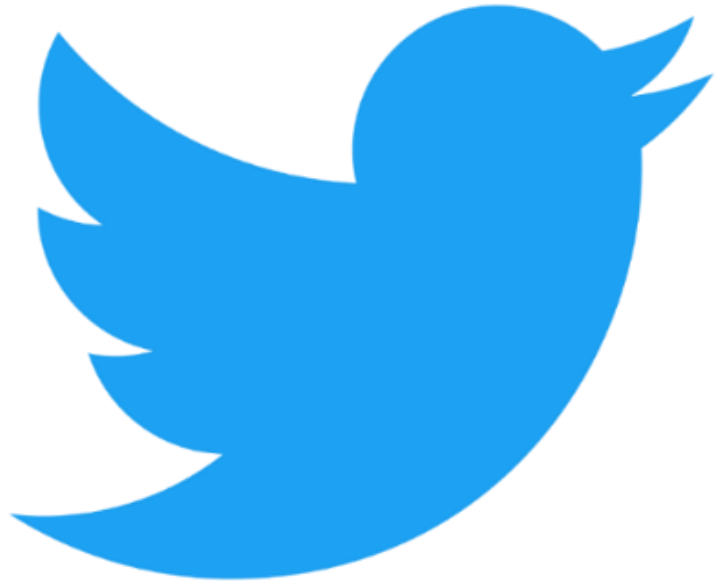
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## E-rate Form 470 for Category Two: Funding Year 2020

Thursday, November 7, 2:00-3:30 pm ET (1:00-2:30 pm CT)

## Overview of KYSTATS & Career Explorer Tool

Tuesday, November 19, 2:00-3:00 pm ET (1:00-2:00 pm CT)

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# Thank you for attending!

Louis D. Kelly  
Commonwealth's Attorney  
54<sup>th</sup> Judicial Circuit  
[lkelly@prosecutors.ky.gov](mailto:lkelly@prosecutors.ky.gov)

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