



## **PETITION CIRCULATION/SIGNATURE GATHERING: GENERAL CONSTITUTIONAL CONSIDERATIONS**

The First Amendment to the Constitution provides that “Congress shall make no law ... abridging the freedom of speech, ... or the right of the people ... to petition the Government for a redress of grievances.” To this end, there is no question that “the solicitation of signatures for a petition involves protected speech.”<sup>1</sup> Indeed, this kind of speech “is at the core of our electoral process and of the First Amendment freedoms—an area of public policy where protection of robust discussion is at its zenith.”<sup>2</sup>

The reasons for this are clear:

The circulation of an initiative petition of necessity involves both the expression of a desire for political change and a discussion of the merits of the proposed change. Although a petition circulator may not have to persuade potential signatories that a particular proposal should prevail to capture their signatures, he or she will at least have to persuade them that the matter is one deserving of the public scrutiny and debate that would attend its consideration by the whole electorate. This will in almost every case involve an explanation of the nature of the proposal and why its advocates support it. Thus, the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as “core political speech.”<sup>3</sup>

“the extent to which the Government can control access depends on the nature of the relevant forum.”<sup>4</sup>

Certain public property is so historically associated with the exercise of First Amendment rights that it cannot be totally closed to protected expression. Streets, public sidewalks and parks fall

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<sup>1</sup> *Meyer v. Grant*, 486 U.S. 414, 422 n. 5, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988).

<sup>2</sup> *Id.* at 425, 108 S.Ct. 1886 (citation and internal quotation marks omitted).

<sup>3</sup> *Meyer v. Grant*, 486 U.S. 414, 108 S.Ct. 1886, 100 L.Ed.2d 425 (1988)

<sup>4</sup> *Id.*

within this category.<sup>5</sup> To this end, the Supreme Court has developed a tripartite categorization of public spaces: (1) traditional public forum; (2) designated public forum; and (3) nonpublic.<sup>6</sup> Given that none of the forums here are nonpublic, the Court’s analysis should center on the first two categorizations.

“Traditional” public forum analysis is as follows: **“public places” historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be “public forums.”**<sup>7</sup> **Traditional public forum property occupies a special position in terms of First Amendment protection: the more a forum resembles a traditional public forum, the greater an interest the state must show to justify restricting access.**<sup>8</sup> **A traditional public forum is a forum which “by long tradition or by governmental fiat [has] been devoted to assembly and debate.”**<sup>9</sup>

In such places, the government's ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place, and manner regulations as long as the restrictions “are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.” Additional restrictions such as an absolute prohibition on a particular type of expression will be upheld only if narrowly drawn to accomplish a compelling governmental interest.<sup>10</sup>

The second category is the “designated” public forum, “public property which the state has opened for use by the public as a place for expressive activity.”<sup>11</sup> Restrictions on expression in such forums are evaluated under the same standard as that applicable to traditional public forums.<sup>12</sup>

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<sup>5</sup> *Hague v. CIO*, 307 U.S. 496 (1939).

<sup>6</sup> *United Food & Commercial Workers Local 1099 v. City of Sidney*, 364 F.3d 738, 746 (6th Cir.2004).

<sup>7</sup> *Id.*

<sup>8</sup> *Student Government Assoc. v. Board of Trustees of University of Massachusetts*, 676 F.Supp. 384, 386 (D.Mass.1987) (Tauro, J.), *aff'd* 868 F.2d 473 (1st Cir.1989).

<sup>9</sup> *Id.*

<sup>10</sup> *United States v. Grace*, 461 U.S. 171, 177, 103 S.Ct. 1702, 75 L.Ed.2d 736 (1983) (citations omitted) (quoting *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)).

<sup>11</sup> *Perry Education Ass'n*, *supra.*, 460 U.S. at 45, 103 S.Ct. 948.

<sup>12</sup> *Id.* at 46, 103 S.Ct. 948.

Meanwhile, only places like jailhouse grounds,<sup>13</sup> areas immediately surrounding a courthouse,<sup>14</sup> military bases,<sup>15</sup> and areas immediately surrounding a school<sup>16</sup> are not considered public forums.

Courts have characterized similar public markets as traditional public forums. **Public streets and sidewalks have been used for public assembly and debate, the hallmarks of a traditional public forum.”<sup>17</sup>**

**“Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.”<sup>18</sup>**

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<sup>13</sup> *Adderly v. Florida*, 385 U.S. 39 (1966).

<sup>14</sup> *Cox v. Louisiana*, 377 U.S. 288 (1965).

<sup>15</sup> *Greer v. Spock*, 424 U.S. 828 (1976).

<sup>16</sup> *Grayned v. City of Rockford*, 408 U.S. 104 (1972).

<sup>17</sup> *Frisby v. Schultz*, 487 U.S. 474, 480 (1988).

<sup>18</sup> *Mosley*, 408 U.S. at 95-96, 92 S.Ct. at 2290, 33 L.Ed.2d at 216-217.