

# FREE SPEECH & RELIGIOUS EXPRESSION

FIRST  LIBERTY

# RELIGIOUS LIBERTY PROTECTION KIT

Know Your Rights to Free Speech  
and Religious Expression



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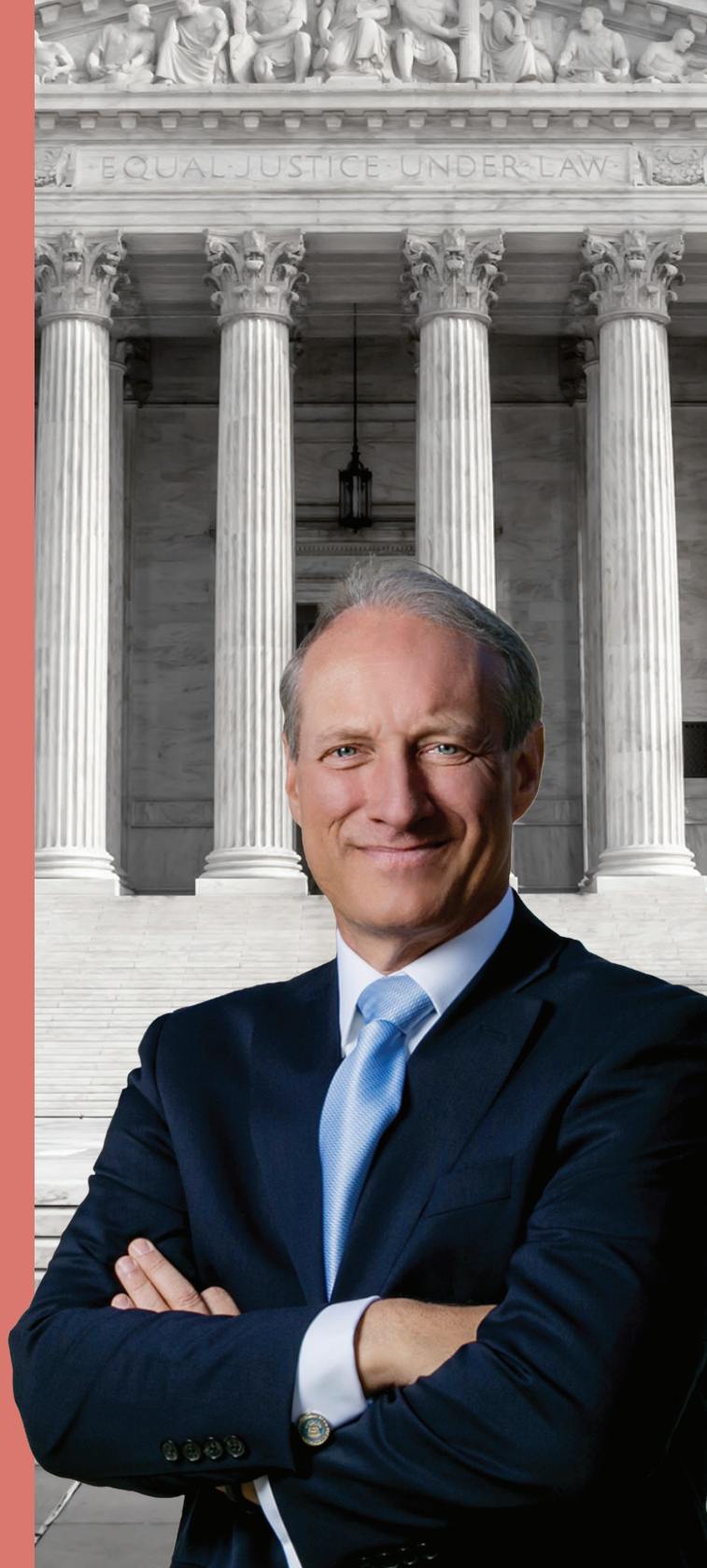
Thank you for your interest in preserving **free speech and religious expression in the public arena**. I hope you find this **Religious Liberty Protection Kit** a simple but high-quality tool for helping you guard the most precious freedom you or anyone in our society has: religious liberty, our first liberty in the Bill of Rights.

Please let us know any further way we can help you.



**Kelly Shackelford, Esq.**

*President, CEO & Chief Counsel*







## **FIRST LIBERTY INSTITUTE® RELIGIOUS LIBERTY PROTECTION KIT FOR FREE SPEECH AND RELIGIOUS EXPRESSION**

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# INTRODUCTION

*“Freedom of speech is a principal pillar of a free government: When this support is taken away, the constitution of a free society is dissolved, and tyranny is erected on its ruins.”*  
**Benjamin Franklin [1]**

Freedom of speech, often regarded as the principal pillar of a free government, plays a crucial role in maintaining the fabric of a free society. The United States Constitution, through the First Amendment, embodies this principle by limiting the government’s ability to interfere with an individual’s speech or expressive actions. [2] The right to free speech exists against all levels of government, be it federal, state, or local, thereby providing a comprehensive shield for individual expression. [3]

The First Amendment’s scope is particularly significant in the context of religious speech. It “doubly protects” this form of expression, a stance rooted in the “framers’ distrust of government attempts to regulate religion and suppress dissent.” [4] This constitutional safeguard ensures that the government cannot single out religious expression or viewpoints for special regulation or exclusion. [5]

This Free Speech Protection Kit provides key information so that you can fully exercise your right to express your faith freely. Thank you for the important work you do for your community and for your interest in protecting, advancing, and restoring religious liberty.

## Citations:

1. Benjamin Franklin [attributed], *On Freedom of Speech and the Press*, PA. GAZETTE, November 17, 1737, available at <https://jackmillercenter.org/cd-resources/benjamin-franklin/#letter>.
2. The First Amendment provides, in relevant part, that: “Congress shall make no law . . . abridging freedom of speech.” U.S. CONST. amend.
3. I, cl. 3. This is known as the “Free Speech Clause.”
3. See *Cantwell v Connecticut*, 310 U.S. 296, 303 (1940) (incorporating the First Amendment’s Free Speech Clause against state governments).
4. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 523–34 (2022).
5. See, e.g., *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828–29 (1995). The First Amendment’s Religion Clauses compliment the Free Speech Clause’s protection of religious expression. See U.S. CONST. amend. I, cl. 1-2; *Kennedy*, 597 U.S. at 523–24. Combined, the Constitution’s Free Speech Clause and Religion Clauses provide American residents with some of the strongest religious protections in the world.

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## The Public Forums

### The Public Forum

The First Amendment's Free Speech clause protects a wide variety of expressive activity, such as speeches, protests, rallies, signs, leafleting, newspapers, art, books, and many other activities. [6] The First Amendment's protection varies depending on the place where speech at issue occurs: particularly whether the speech occurs on public or private property. In general, the First Amendment's protections apply to the government and government property, not private parties and private property. This means that (except for other federal, state, or local laws) private parties may limit what others say on their property and what activities occur on their property. However, the government may not do so to the same extent.

The government's ability to restrict speech that occurs on public property depends on what type of property it is. [7] Different categories of government property have different levels of First Amendment protection. For example, individuals are generally allowed greater freedom of speech on a public sidewalk than they are on a military base. [8] This categorization of public property is called public forums doctrine. Understanding this doctrine will provide you with a better idea of the scope of your rights under the Free Speech Clause.

#### Types of Forums

There are four types of government forums: the traditional public forums, the designated public forums, the limited public forums, and the nonpublic forums. The type of forums will determine the types of restrictions the government can impose on speech.

**Table 1 - Public Forums Overview**

Forums Type	Example	Strength of Freedom of Speech
Traditional Public Forums	Public Park	● ● ● ●
Designated Public Forums	Municipal Theater Open to the Public	● ● ● ○
Limited Public Forums	University Rooms Open to Student Groups	● ● ○ ○
Nonpublic Forums	Airport Terminal	● ○ ○ ○

## Traditional Public Forums

A traditional public forum is government property that has historically been open for public assembly and expression. [9] Classic examples of traditional public forums include streets, sidewalks, parks, and town squares/public malls. [10] Your right to free speech is strongest in these locations. In a traditional public forum, the government may impose reasonable time, place, and manner restrictions on speech, but it may only place limits on the content of speech if doing so satisfies strict scrutiny, [11] the most stringent type of judicial review in constitutional law. [12] It may never restrict speech based on its viewpoint. [13] The government typically cannot close a traditional public forum. [14]

## Designated Public Forums

A designated public forum is government property that has not historically been open for public assembly and expression, but which the government has intentionally opened for public expressive activity and discourse. [15] Designated public forums are treated identically to traditional public forums for purposes of free speech analysis, but the government is not required to indefinitely retain the open character of these locations and may close the forums. [16] Examples of designated public forums include university meeting facilities open to the public, school board meetings, and municipal theaters that have been opened to all individuals for expressive activities. [17]

## Limited Public Forums

A limited public forum is a distinct type of designated public forum that is open for public use only by certain groups or dedicated to the discussion of certain subjects. [18] The government may restrict the content of speech in these locations so long as its restrictions are reasonable and do not discriminate based on the viewpoint of speech. [19] That is, the government “may reserve the forums for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” [20] Examples of limited public forums may include university rooms opened for student groups or subway platforms opened for charitable solicitation. [21]

## Nonpublic Forums

A nonpublic forum is government property that is not

traditionally open for public expression. [22] In these places, the government may limit private speech so long as those limitations are reasonable and viewpoint neutral. [23] Nonpublic forums are generally characterized by selective access policies. [24] Examples of nonpublic forums include military bases, jails, and a public school’s internal mailing system. [25]

## Government Regulation or Restriction of Speech

### *Neutral Time, Place, and Manner Restrictions*

The government can impose reasonable time, place, and manner restrictions in all three forum types. [26] There are three major requirements that time, place, and manner restrictions must satisfy. First, they cannot be content- or viewpoint-based. [27] Second, the regulation must “serve a significant governmental interest.” [28] Lastly, there must be ample alternative forums available for the speech despite the force of the regulation. [29] These regulations are fairly common. An example of such a regulation may be that no speech can occur over a megaphone on city property past 9:00 PM. This regulation is “content neutral” because it applies to everyone using the park—whether the individuals be joggers or protesters.

Still, even content-neutral time, place, and manner restrictions can be abused. So, the Supreme Court holds that these regulations must contain adequate standards to guide government decision makers and to enable courts to review the regulations. [30]

### *Content-based Restrictions*

Content-based restrictions are those whose application depends on the communicative content of the speech. [31] Some laws are facially content-based. These laws target the subject matter or topic of the regulated speech in their text. For example, a town ordinance that imposes restrictions for “political” signs. [32] In addition, a law that is facially content neutral will nevertheless be considered content-based if a court determines that it has a content-based purpose. [33] The government may place reasonable content restrictions on speech in limited public forums and nonpublic forums. But the government may not restrict the content of speech in traditional public forums and designated public forums unless it has a compelling reason to do so and does so in a narrowly tailored manner. [34]



### **Viewpoint Discrimination**

A specific type of content discrimination that is never allowed—regardless of the forums—is viewpoint discrimination. Viewpoint discrimination is an “egregious form of content discrimination” in which the government targets the “particular views taken by speakers on a subject,” not the subject matter itself. [35] The government “must abstain” from regulating speech when it wishes to do so on account of the motivating ideology of the speaker. [36]

Under this rule, religious expression must receive the same treatment that secular expression receives. Excluding religious expression as such is usually a form of impermissible viewpoint discrimination. [37] For example:

- A public school may not deny a student organization funding that is otherwise generally available to all student organizations simply because the organization at issue expresses religious beliefs. [38]
- Public schools may not prohibit religious groups from gaining access to school rooms after hours which are otherwise open to civic organizations merely because the former groups are religious in nature. [39]

Where the government regulates religious speech as such and treats it differently than similarly situated secular speech, it does not matter if the government asserts a benign purpose or lacks animus against religion. [40] It cannot subject religious perspectives to differential treatment. [41] Although many governments justify excluding religious speech in order to preserve “separation of church and state,” such arguments will not justify discriminating against private citizens’ religious speech. [42]

### **Government Speech**

While the First Amendment’s Free Speech Clause limits the government’s ability to place restrictions on private speech that occurs on public property, it does not place limits on what the government itself can communicate. [43] Under the government speech doctrine, government entities generally have the right to speak for themselves, say what they wish, and express a particular point of view. [44] Were this not the case, it would be very difficult for the government to make policy or pass laws. [45] As a result, the First Amendment’s restrictions on content and viewpoint discrimination do not apply to the government’s own speech. [46]



## **Government Regulation or Restriction of Speech**

This means that, generally, a person cannot file a lawsuit against the government for saying something he or she does not like. Instead, political solutions, such as voting, protests, and submitting comments, are typically the best way to address objections to government speech. [47]

Whether the speech involved belongs to the government is often a complex legal question that depends on several factors in each individual situation, such as the history of the type of expression at issue and the extent of the government's control over the content of that expression. [48] For example, permanent monuments displayed on public property are typically considered government speech, even if the monuments are privately donated. [49] However, temporary displays that citizens place on public property may not be if the government has opened the space as a forum. [50] Similarly, government-owned flagpoles are typically government speech, unless the government decides to treat the flagpole as a public forum. [51] Courts also have held specialty license plate designs to be government speech. [52]

### Free Speech and Social Media


Social media censorship is a significant area of ongoing legal development. Generally, the Constitution only limits the government's action, not the actions of private citizens or companies. [53] This means that the First Amendment typically does not protect the free speech of individuals who wish to speak through privately owned platforms, such as social media. However, some state laws and legal arguments are taking aim at social media censorship in an effort to provide more legal protection for individual expression. [54] This area of law is currently under construction and, as a result, a reliable legal rule cannot be articulated here. If you are experiencing social media censorship of your religious expression, please contact us for more information.

### Free Association

The right to free speech carries with it a right for individuals to associate with others that share similar political, religious, or cultural beliefs. [55] Otherwise, the government could stifle free speech by preventing individuals with minority viewpoints from interacting with each other. [56] This freedom of association generally allows private organizations to control their membership rolls and deny admission to individuals who do not share similar views. The Supreme Court has held that forcing a group to include an unwanted person in its membership infringes upon the







# Speech

group's freedom of association "if the presence of that person affects in a significant way the group's ability to advocate public or private viewpoints." [57] This protection is not reserved for advocacy groups; any group can benefit from it so long as the group engages in some form of expression (public or private). [58] The government may impose regulations that restrict the freedom of expressive association, but only if they serve a compelling government interest unrelated to the suppression of ideas and the goal cannot be achieved through less restrictive regulation. [59] This area of law is nuanced. As an example, in one case, the Supreme Court ruled that the Boy Scouts of America may prohibit gay individuals from serving as scout leaders but, in another case, ruled that the United States Jaycees may not prevent women from becoming full members. [60]

Beyond laws that serve a compelling government interest, one way in which the government may be able to influence a group's private membership is through a so-called "all-comers policy." All-comers policies, which usually appear in the context of student groups at public schools, require that registered student groups accept all students that wish to join, regardless of their views. [61] The Supreme Court has held that these policies can be acceptable within the public-school context in certain circumstances, so long as the policies are truly neutral and generally applicable to all student groups. [62] But public schools struggle to craft these policies to be truly neutral. In one significant case, a court of appeals found that an all-comers policy failed to satisfy this neutrality requirement because it afforded school administrators broad discretion, which they used to enforce the policy unevenly. [63]

For more information on freedom of association in the school context, please see the Protection Kit for Students and Teachers. [64]

## Frequently Asked Questions

**The following information is only intended to provide general guidance and should not be construed as legal advice.**

**Q:** I'm a street preacher. Do I have to obtain a permit to use a megaphone or sound amplification?

**Short Answer:** Many city ordinances put restrictions on sound amplification devices and may require permits. It would be prudent to obtain any necessary permits.

**Long Answer:** Evangelists who speak or proselytize in public places like parks and sidewalks stand on strong constitutional ground as these locations are considered traditional public forums. [65] Further, speech cannot be prohibited simply because it's offensive or annoying to some observers. [66] However, these protections are not impenetrable shields. For instance, if you plan on using any sound amplification devices (such as microphones, speakers, or megaphones), if there's any public gathering connected to the demonstration, or if you plan on distributing pamphlets and other materials, local governments have some flexibility to impose permit requirements. In sum, though street preaching is a constitutionally protected activity, it's prudent to research local laws regarding permits just to cover all the bases.

**Q:** I've been excluded from a parade. Is that legal?

**Short Answer:** If the parade is organized by a private group, the exclusion is likely legal.

**Long Answer:** This ultimately depends on whether the parade is privately or publicly organized. Even if a parade occurs in public, if it is organized by a nongovernmental entity, it is a privately organized parade and the First Amendment does not apply. For example, in *Hurley* the Supreme Court held that a private association that conducted a large St. Patrick's Day parade could not be compelled to include a contingent that expressed views they did not agree with. [67] Although Massachusetts tried to enforce a public accommodations law to require the parade to allow any group to participate, the Court found it unconstitutional to compel the private organization to engage in speech by including a group it did not wish to include. [68] One of the key facts in this case was the nature of the parade organizer, because the compelled speech doctrine is fundamentally about compulsions of private speech. [69] Thus, if the parade organizer was a governmental entity (such as the City of Boston), the legal analysis would be different. [70]

**Q:** Can religious speech be excluded to protect the "separation of church and state"?

**Short Answer:** No, that would constitute viewpoint discrimination.

**Long Answer:** Governments often interpret the

Establishment Clause as requiring the purging of all vestiges of religion from public life, even if comparable nonreligious speech is allowed. Not only is this a misreading of the Establishment Clause, it is constitutionally suspect itself: "excluding religious messages from public forums that are open to other viewpoints is a 'denial of the right of free speech' indicating 'hostility to religion' that would 'undermine the very neutrality the Establishment Clause requires.'" [71] The First Amendment's Free Speech Clause prohibits viewpoint discrimination, including discrimination against religious viewpoints. The First Amendment's Free Exercise Clause also prohibits the government from targeting religious activity, including religious speech, for discriminatory or disfavored treatment. [72] As explained in more detail above, these protections apply where the government is regulating private citizens' speech, but they do not apply where the government is speaking for itself.

**Q:** My city government is flying a Pride Flag for Pride Month. Can I make the government fly the Christian flag?

**Answer:** Probably not, unless the flag flying policy operates as a public forum. Flag flying is usually considered government speech, so the government can choose to fly only the flags it wishes. [73] A Supreme Court case involving Boston City Hall's flagpole was an unusual case, where the city's policy allowed anyone to request to fly a flag and, thus, opened a public forum. [74]

**Q:** I want my city to display a nativity for Christmas. Can I get this done?

**Short Answer:** The government generally can put up nativity scenes, but it doesn't have to.

**Long Answer:** The government can put up nativity scenes if they are situated in a certain way, but they don't *have* to. Where the government places a nativity display among a seasonal display, it typically does not violate the Establishment Clause. [75] Often called the "Reindeer Rule," courts have upheld nativity scenes if they were part of a larger seasonal display that included secular symbols, such as Santa and reindeer. This rule was based on *Lemon v. Kurtzman's* endorsement test, which has been overruled. [76] As a result, the law may now support a standalone nativity scene, but that specific issue has not yet been litigated.

However, just because the government has the ability to put

up nativity displays doesn't mean they *can be compelled to do so*. The government generally gets to decide whether to place monuments and displays on its property, unless it has opened a public forums for displays. [77]

**Q:** Can I get obscene books removed from my school or library?

**Short Answer:** You can petition your local school board to remove books that contain obscenity. A school board generally may remove books that contain obscenity. [78] That said, you likely cannot force the government to remove books through litigation, even if you find the books offensive.

**Long Answer:** The issue of book removal (on grounds of "obscenity") generally lies within the authority of local government, such as school boards. While removing books because the school board does not like the ideas they contain is constitutionally problematic, [79] school boards may ensure that school libraries serve their intended purpose. [80] However, litigation is generally not a good avenue to force a school board to remove certain books. Another alternative for concerned parents is to seek to opt-out from curricula they find objectionable. Many states allow parents to opt their children out of classwork that violates their religious beliefs.

**Q:** I want to donate a Ten Commandments poster to a public school. Can I do this?

**Answer:** You can ask to donate a Ten Commandments poster to a public school. However, they probably will not accept it out of an abundance of caution, and they likely are not required to accept it. Although after the *Kennedy* case, the Establishment Clause supports displays within the nation's history and tradition and, thus, provides more leeway for displays related to the religious origins of America, [81] older cases prohibiting displaying the Ten Commandments in classrooms have not been formally overturned. [82] As a result, expect school districts to be cautious in accepting donated Ten Commandments displays. The posters displayed in a school often reflect government speech, so a private citizen generally will not be able to compel the school to accept and display the donated poster.

**Q:** My city government decided to fly the Pride flag or host a Pride parade. What can I do about it?

**Answer:** Submit comments to your elected officials

expressing your disagreement and vote for candidates that reflect your beliefs and preferences. Generally, you cannot sue the government for engaging in speech that you do not like.

**Q:** The Satanic Temple has an offensive display or is sponsoring an After School Satan Club. What can I do about it?

**Answer:** Compete with them by expressing your own religious beliefs. Understand that groups like the Satanic Temple intentionally use outrageous displays and behavior to provoke censorship. The Constitution's prohibitions on viewpoint discrimination protect even speech that is unpopular or distasteful, and if you advocate for restrictions, those restrictions will apply to your own religious expression and to Christian groups as well. Start a student-led Bible Study or Good News club instead of trying to shut down clubs. For more information on legal protections for student clubs in public schools, see our Protection Kit for Students and Teachers.

#### Citations:

6. *See, e.g., 303 Creative v. Elenis*, 600 U.S. 570, 586–87 (2023) (describing the scope of Free Speech protections); *Nat'l Endowment for the Arts v. Finley*, 524 U.S. 569, 579–81 (1998) (accepting that "artistic speech" qualifies for First Amendment protection); *see also Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 790 (1994) (Scalia, J., concurring in part and dissenting in part) (listing as forms of persuasive speech "singing, chanting, praying, shouting, the playing of music . . . from handheld boom boxes, speeches, peaceful picketing, communication of familiar political messages, [and] handbilling").
7. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45–46 (1983).
8. *See id.* at 45–47.
9. *See id.* at 45.
10. *See Perry Educ. Ass'n*, 460 U.S. at 45.
11. *See Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018); *Christian Legal Soc'y Chapter of the Univ. of Cal., Hastings Coll. of the Law v. Martinez*, 561 U.S. 661, 679 n.11 (2010).
12. To satisfy a test of strict scrutiny, the government must demonstrate that a given regulation serves a compelling state interest and that the regulation satisfies that interest in a narrowly tailored manner. *See* Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1268 (2007).
13. *Minn. Voters All.*, 138 S. Ct. at 1885.
14. *Seattle Mideast Awareness Campaign v. King Cnty.*, 781 F.3d 489, 496 (9th Cir. 2015).
15. *See Perry Educ. Ass'n*, 460 U.S. at 45.
16. *Id.* at 46.
17. *Widmar v. Vincent*, 454 U.S. 263, 267–68 (1981) (university meeting facilities); *City of Madison Joint Sch. Dist. v. Wis. Pub. Emp. Relations Comm'n*, 429 U.S. 167, 176 (1976) (school board meeting); *Se. Promotions*,



- Ltd. v. Conrad*, 420 U.S. 546, 555–57 (1975) (municipal theater).
18. *Martinez*, 561 U.S. at 679 n.11.
19. *Id.*
20. *Perry Educ. Ass'n*, 460 U.S. at 46.
21. *Cf. Miller v. City of Cincinnati*, 622 F.3d 524, 535 (6th Cir. 2010) (reasoning that the City of Cincinnati had created a limited public forums when it opened the city hall to private groups for certain expression under a specific city regulation).
22. *Am. Freedom Def. Initiative v. Se. Pennsylvania Transp. Auth.*, 92 F. Supp. 3d 314, 324 (E.D. Pa. 2015) (quoting *Perry Educ. Ass'n*, 460 U.S. at 46); see *U.S. Postal Serv. v. Greenburgh Civic Ass'n*, 453 U.S. 114, 129 (1980) (stating that “the First Amendment does not guarantee access to property simply because it is owned or controlled by the government”).
23. *Id.*
24. See *Perry Educ. Ass'n*, 460 U.S. at 47.
25. See *Perry Educ. Ass'n*, 460 U.S. at 47 (public school internal mail system); *Adderley v. Florida*, 385 U.S. 39 (1966) (jails), *Greer v. Spock*, 424 U.S. 828 (1976) (military bases).
26. See *Perry Educ. Ass'n*, 460 U.S. at 45–46; *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 322 (2002).
27. See *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640, 648 (1981).
28. See *id.* at 649 (internal quotation omitted); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).
29. *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976).
30. See *Niemotko v. Maryland*, 340 U.S. 268, 288–89 (1951).
31. *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015).
32. See *id.* at 159–160.
33. See *Reed*, 576 U.S. at 164; see *United States v. Eichman*, 496 U.S. 310, 317–18 (1990) (holding that, though the statute prohibiting flag burning was content-neutral, Congress had an impermissible, content-based justification for the law).
34. See *Perry Educ. Ass'n*, 460 U.S. at 45–46.
35. See *Rosenberger*, 515 U.S. at 829.
36. See *id.*
37. See *id.* at 837.
38. See *id.* at 834–836 (school's decision to not provide funding for a student organization to print a religious publication was unconstitutional discrimination in a limited public forum).
39. See *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 109–111 (2001).
40. See *Reed*, 576 U.S. at 165.
41. *Id.*
42. See *Shurtleff v. City of Bos.*, 596 U.S. 243, 247–48 (2022); *Kennedy*, 597 U.S. at 532–33.
43. See *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 207 (2015).
44. See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467–68 (2009).
45. *Nat'l Endowment for Arts*, 524 U.S. at 598 (Scalia, J., concurring in judgment).
46. See *Shurtleff*, 596 U.S. at 247–48.
47. See *id.* at 252 (“The Constitution therefore relies first and foremost on the ballot box, not on rules against viewpoint discrimination, to check the government when it speaks.”); *Sons of Confederate Veterans*, 576 U.S. at 207.
48. *Shurtleff*, 596 U.S. at 252.
49. *Summum*, 555 U.S. at 472.
50. See, e.g., *Freedom From Religion Found., Inc. v. Abbott*, 58 F.4th 824, 830–31 (5th Cir. 2023)
51. *Shurtleff*, 596 U.S. at 258.
52. *Walker*, 576 U.S. at 214–15.54.
53. See *Hurley v. Irish-American Gay, Lesbian, and Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995).
54. See, e.g., *Missouri v. Biden*, 662 F. Supp. 3d 626 (W.D. La. 2023); Hiram S. Sasser, III & Lea E. Patterson, The Religious Liberty Solution to Big Tech Censorship: How the Religious Freedom Restoration Act Limits Section 230, 26 Tex. Rev. L. & Pol. 607 (2022).
- In early 2024, the Supreme Court will hear arguments in two cases challenging state regulations that limit the extent to which social media platforms can censor user content. The outcome of these cases may change this area of law. *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439 (5th Cir. 2022), cert. granted in part, 216 L. Ed. 2d 1313 (Sept. 29, 2023); *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196 (11th Cir. 2022), cert. granted in part sub nom. *Moody v. Netchoice, LLC*, 216 L. Ed. 2d 1313 (Sept. 29, 2023); See Adam Candeub, Two Conservative Visions of the First Amendment: Social Media Anti-Discrimination Law at the Supreme Court, The Federalist Society (Oct. 20, 2023), <https://fedsoc.org/commentary/fedsoc-blog/two-conservative-visions-of-the-first-amendment-social-media-anti-discrimination-law-at-the-supreme-court>.
55. See *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984) (noting that “implicit in the right to engage in activities protected by the First Amendment” is a “corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”)
56. See *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647–48 (2000).
57. *Id.* at 648.
58. *Id.*
59. *Id.*
60. Compare *Dale*, 530 U.S. at 644, with *U.S. Jaycees*, 468 U.S. at 612.
61. See *Martinez*, 561 U.S. at 696–98.
62. See *id.*
63. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist.*, 82 F.4th 664, 678, 693 (9th Cir. 2023).
64. <https://firstliberty.org/publicschoolkit/>.
65. See *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1885 (2018).
66. See *Cohen v. California*, 403 U.S. 15, 26 (1971).
67. 515 U.S. at 559.
68. See *id.* at 572–73.
69. See *id.* at 560.
70. See *id.* at 571–72.
71. See *Shurtleff*, 142 S. Ct. at 1602 (quoting *Rosenberger*, 515 U.S. at 839) (emphasis added).
72. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532–33 (1993).
73. See *Shurtleff*, 142 S. Ct. at 1587.
74. See *Shurtleff*, 142 S. Ct. at 1592–93 (contrasting Boston's “come-

one-come-all” attitude for flag raisings with other city policies that reserve flagpoles for government speech); *see also Freedom from Religion Found., Inc. v. Abbott*, 58 F.4th 824, 835 (5th Cir. 2023) (emphasizing Shurtleff’s idiosyncratic nature).

75. *See Cty. of Allegheny v. ACLU*, 492 U.S. 573, 598–602 (1989) (invalidating standalone nativity but upholding the inclusion of religious displays in a larger seasonal display); *Woodring v. Jackson Cty.*, 986 F.3d 979, 996 (7th Cir. 2021) (upholding nativity display that was part of a larger seasonal display).

76. *See Allegheny*, 492 U.S. at 592; *Kennedy*, 597 U.S. at 534.

77. *See Pleasant Grove City v. Sumnum*, 555 U.S. 460, 481 (2009).

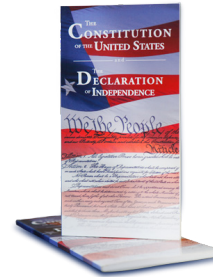
78. The Supreme Court defines obscenity as “(a) whether ‘the average person, applying contemporary community standards’ would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24 (1973) (citations omitted).

79. *See Bd. of Educ. v. Pico*, 457 U.S. 853, 871 (1982) (plurality op.).

80. *See United States v. Am. Libr. Ass’n, Inc.*, 539 U.S. 194, 209 n.4 (2003) (plurality op.) (noting that libraries are designed “to provide its patrons with materials of requisite and appropriate quality, not to create a public forums . . .”).

81. *See Kennedy*, 142 S. Ct. at 2428.

82. *See Stone v. Graham*, 449 U.S. 39 (1980). The Supreme Court’s decision in *Kennedy* to overturn *Lemon v. Kurtzman* undermines the validity of cases that relied on *Lemon*, such as *Stone v. Graham*. Courts have not yet addressed how overturning *Lemon* changes the outcome with respect to the specific situation of Ten Commandments displays in public schools. As a result, the issue is an open question subject to further development.



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**Gail Blair**

Gail Blair is a legally blind, former nurse who loves telling people about her faith; often in conversations with people in public parks. But officials sent the police to threaten Gail with arrest if she entered the park again. They prohibited Gail from freely exercising her faith and silenced her right to free speech—two actions “doubly protected” by the Constitution. Thanks to First Liberty’s representation, the park officials backed down and she now freely shares her faith.



**Paul Johnson**

Paul Johnson, a Tennessee grandfather, enjoys sharing his faith. But the city of Sweetwater stood in his way and threatened him with arrest if he did not stop reading his Bible aloud in a public area without a permit. First Liberty stepped in to defend Paul, and the city agreed to let him freely express his faith—no permit required.



**Basin Park Nativity Scene**

With the exception of one or two years because 1950, a nativity scene has been displayed in Basin Park in Eureka Springs, Arkansas. But a resident threatened to file a lawsuit because the display was on public property. We helped the Great Passion Play, a Christian non-profit organization that sponsors the display. Our attorneys met with the city and secured a permit for the nativity scene to stay up.



**Rehoboth Beach Nativity Display**

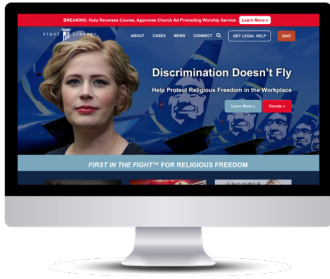
For decades, a crèche - or nativity scene - had been displayed in the main public square of Rehoboth Beach, Delaware as part of its annual holiday tradition. Other displays included a Christmas tree, Santa’s house, and holiday lights. When the Knights of Columbus erected the crèche in its traditional location, the city ordered it removed because of its religious nature. First Liberty sued the city on behalf of the Knights and restored the nativity scene as part of the community’s Christmas display.



**Wendy Faustin**

Wendy Faustin believes that human life begins at conception and has God-given worth and dignity. She tries to speak to women outside abortion facilities and provide them with information about the procedure, the unborn, and available alternatives and resources, hoping to convince them to pursue another option. But laws in Colorado create “buffer zones” that target life-affirming counseling and education around abortion centers. We’re challenging these laws in federal court as unconstitutional restrictions on Wendy’s speech.





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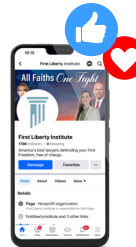
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**Nate Kellum**

*Senior Counsel*

*Chair - Public Arena*

First Liberty is our nation's largest legal organization solely dedicated to protecting religious liberty for all Americans. We have won cases at all court levels, including the United States Supreme Court, federal and state courts, and administrative courts and agencies. Victories are won through a nucleus of top-ranked staff attorneys who coordinate a national network of top litigators from firms that include 24 of the largest 50 in the world.



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