



POLITICAL ACTIVITIES IN PUBLIC HOUSING COMMON AREAS

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ISSUE

Can a public housing authority prohibit its tenants from using common areas, such as meeting rooms and auditoriums, for political activities?

The Office of Legislative Research is not authorized to issue legal opinions, and this report should not be considered one.

SUMMARY

Neither state nor federal law prohibits housing authorities from banning political activities in common areas. According to the state Department of Housing (DOH) and federal Department of Housing and Urban Development (HUD), housing authorities may set their own rules concerning tenants' use of common areas, which may specify when tenants may use such areas and for what purposes. According to DOH and HUD, housing authorities' rules may prohibit political activities in common areas. However, these rules must comply with constitutional limits imposed by the First Amendment's freedom of expression provision.

The constitutional limits imposed on housing authorities' regulation of common areas depend on the purpose for which a common area was created and its past use (i.e., the type of "forum" created, see BACKGROUND). We reviewed relevant case law and found that common areas in public housing projects have been deemed both "nonpublic fora" and "limited public fora." When a common area is deemed a nonpublic forum, tenants do not have the right to organize activities in the space. When a common area is deemed a limited public forum, tenants may use the space for activities authorized by the housing authority. (See, *Crowder v. Housing Authority*, 990 F.2d 586 (11th Cir. 1993) (auditorium is a limited public forum but a library a nonpublic forum); *Daily v. New York City Housing Authority*, 221 F.Supp.2d 390 (SDNY 2002) (community center is a limited public forum when not in use for regularly scheduled educational activities); *Concerned Residents of*

Taylor-Wythe v. New York City Housing Authority, (unreported) 1996 WL 452432 (SDNY 1996) (community center is a nonpublic forum.)

We did not find any cases concerning the regulation of political activities in public housing common areas. However, even in cases where a common area is deemed a limited public forum, courts have held that housing authorities may regulate the “genre” of allowable activities (e.g., adult education classes, youth club meetings) as long as the authorities do not exclude groups because of the viewpoint they plan to express. For example, a housing authority could prohibit tenants from using an auditorium for family celebrations (e.g., weddings). However, it cannot allow Hindu wedding celebrations while prohibiting Jewish and Christian celebrations. Housing authorities that prohibit tenants from using common areas because of the tenants’ viewpoints may be infringing on First Amendment freedom of expression rights.

BACKGROUND

Forum Analysis

To determine what type of restrictions a government entity can place on a person or group’s use of government-owned property (e.g., a public housing project) to express ideas, courts use a legal doctrine called “forum analysis.” Under this framework, the restrictions’ permissibility under the First Amendment depends on a property’s character and location. In “traditional public fora” (e.g., sidewalks, parks), most expressive activity must be allowed, subject to time, place, and manner restrictions. Conversely, in “nonpublic fora” (e.g., government offices, courthouses), a government entity can place significant restrictions on how people express themselves in order to preserve the property for its intended use, as long as the limits are not aimed at suppressing a particular viewpoint.

A third type of forum, a “limited public forum,” is created when a government entity intentionally opens a nonpublic forum to expressive activity “but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects” (*Travis v. Owego-Apalachin School Dist.*, 927 F.2d 688, 692 (2nd Cir. 1991)). For example, a public college may allow student groups to use campus conference rooms for their meetings, or a housing authority may allow tenants to use a common area for adult education classes. Limited public fora may be created for narrow purposes, but restrictions on their use “must not discriminate against speech on the basis of viewpoint, and must be reasonable in light of the purpose served by the forum” (*Id.*).

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