

Free Speech and Bearing Arms

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For the Association of Research Libraries

A Fundamental Tension

- * Liberty

- * Expression

- * Bear arms

- * Association

- * Equality

- * Inclusion

- * Empowerment

Government Power to Limit Speech

- * Viewpoint — Almost never
- * Content — rarely
- * Time, place, and manner — if the government has an important reason to do so and does so in a reasonable manner

The Public Forum Concept

- * Traditional public forum
 - * Almost no limits other than TPM
- * Private spaces owned by the government
 - * No right to freedom of expression in such areas
- * Designated limited public forums
 - * No viewpoint restrictions; can limit content type and TPM
- * Limited public forums — not formally designated
 - * Undeveloped idea; universities are likely places for this
 - * No viewpoint or content restriction in general, probably
 - * Wide latitude in TPM serving university interest
 - * But general decorum codes and polite speech codes seem well overboard to me

Right to Bear Arms

- * Great latitude to regulate arms granted by Supreme Court to state and local governments as well as federal government
- * Open carry laws — statutes; not constitutionally mandated
- * Expressive conduct — not verbal or oral speech per se, e.g. dancing
 - * Lesser standard of review, like TPM
 - * Governments can regulate expressive conduct provided:
 - * The government is protecting an important interest
 - * The means chosen are closely related to achieving that interest
 - * Ample alternative effective means to get the message out exist

Implications of Bearing Arms as Speech

- * Potential to broaden the right to bear arms
- * Potential to limit what states can do regarding citizens bearing arms
- * Prediction: Court is not likely to expand 2nd Amendment rights and restrict governmental power to regulate them through 1st Amendment claims — but the issue has not yet been faced by the Supreme Court

Recommendations for Public Libraries and Universities

- * Use the designated, limited public forum doctrine to regulate access to spaces for various purposes
- * Use time, place, and manner regulations for methods and timing of speaking; but take care not to do more than needed for protection of safety and other important interests
- * Banning arms from campus and surely from buildings and from rallies and demonstrations would almost surely be constitutional in all situations
- * Avoid excessive permitting conditions for rallies, etc., but use licensing and permitting for demonstrations

Extra-Constitutional Considerations

- * Social media events
- * Provocation
 - * 60's
 - * Gandhi
- * Effective speech, symbolic speech — beware of trying to limit expression to talk only

Limits on Tolerance

- * Equality vs. Liberty
 - * Must tolerate hate speech
 - * Must tolerate vile message
 - * Must tolerate advocacy of violence so long as not immanent and likely at that time
 - * Can speak against
 - * Can teach against

Government Power

- * The government can speak.
- * But it cannot stop the speech of others, no matter how much it disagrees with the message.