

Understanding the Laws Related to First and Second Amendment Rights, Open Carry of Firearms and Displays of Symbols of Hate/Racism

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First Amendment – 5 core values

- ▶ “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.”
- ▶ First Amendment – Applies to State and Local governments through application of the Fourteenth Amendment.
 - “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Speech that Can be Regulated

- True threat,
- Obscenity,
- Child pornography,
- Fighting words, and
- Advocacy of imminent lawless action

“[T]hese areas of speech can, consistently with the First Amendment, be regulated *because of their constitutionally proscribable content* (obscenity, defamation, etc.)—not that they are categories of speech entirely invisible to the Constitution, so that they may be made the vehicles for content discrimination unrelated to their distinctively proscribable content. Thus, the government may proscribe libel; but it may not make the further content discrimination of proscribing *only* libel critical of the government.” *R. A. V. v. City of St. Paul*, 505 U.S. 377 (1992)

Regulated Speech Continued

- True threat, must be capable of being carried out: RCW 9A.04.110(28)
- Obscenity: Whether average person in view of the contemporary community standards would find the work, as a whole, lacks scientific, cultural, literary, artistic or medical value.”
- Fighting words test “words which produce a clear and present danger are unprotected (and are considering fighting words), but words which invite dispute and causes unrest are protected (and are not considered fighting words). ”
- Advocacy of imminent lawless action are “words used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.” E.g. yelling “Fire!” in a crowded theatre.

Speech Protected by First Amendment

- ▶ “Offensive” or “hate speech”
 - No definition of hate speech. Under current First Amendment jurisprudence, hate speech can only be criminalized when it directly incites imminent criminal activity or consists of specific threats of violence targeted against a person or group.
 - Confederate flag can't be banned by government, NASCAR is private and can take that step
- ▶ A hate crime is an overt act and can be proven that the defendant targeted the victim because of the victim's race, ethnicity, identity, or beliefs.

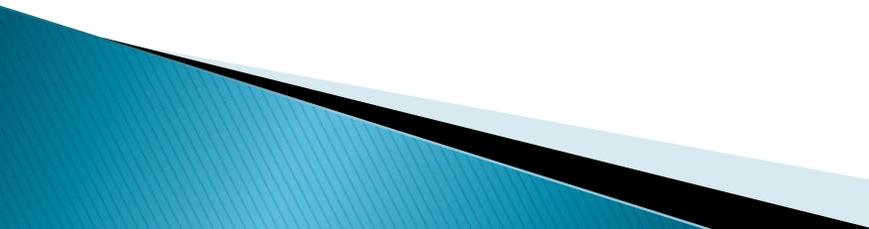
Limitations to the First Amendment

- ▶ Public forum vs. limited forum,
 - Sidewalk, ROW, park are all public forums
 - City council meeting, facebook page are limited public forums.

Public forums received broad protections on content and viewpoint

Limited forums allow the government to limit types of content but not viewpoint

Limitations Continued

- ▶ Time place and manner restrictions – must serve significant government interest (traffic control, prevent destruction, limit violence), and leaves open ample opportunity for alternative means of communication (consider duration of restriction, other ways message can be communicated AND received).
 - ▶ WTO protest and clear zone
 - ▶ Parades exclusionary potential
 - ▶ Receipt of messages is just as important as being able to speak. (Trump twitter case)
 - ▶ Prior restraints are generally not permissible (Bolton Book)
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Second Amendment

- ▶ “A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

Firearm Regulation is Preempted by State and Federal Law

- ▶ Except where State law expressly states otherwise, Cities have no authority to legislate on **who** may carry weapons, **what** type of weapons are lawful to carry or **where** they may be carried.
 - ▶ RCW 9.41.290
 - ▶ RCW 9.42.300
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Where are Firearms Prohibited in Washington State?

- ▶ RCW 9.41.280
 - Schools or School facilities
- ▶ RCW 9.41.300
 - Jails or law enforcement facility
 - Court facilities
 - Mental health facilities and hospitals
 - Portions of airports
 - Areas off limits to persons under age 21 as designated by liquor and Cannabis board

Washington is an “Open Carry” State.

- ▶ No permit is required for open carry.
- ▶ Concealed Pistol requires a license: RCW 9.41.050.
- ▶ Open Carry of a loaded long gun in a vehicle is unlawful.
- ▶ Open Carry of a loaded handgun in a vehicle is lawful only with a permit under RCW 9.41.040.
- ▶ When away from vehicle must be locked up and out of sight
- ▶ Semi-automatic rifles are lawful to carry; fully automatic rifles are not.

Open Carry Limitations

- ▶ RCW 9.41.270
 - (1) It shall be unlawful for any person to carry, exhibit, display, or draw any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.
- ▶ Violation is a gross misdemeanor and loss of CPL
- ▶ Exceptions
- ▶ Court Cases

Drinking in Public and Open Carry

- ▶ No statute address the combination.

Additional Resources

- ▶ <https://www.atg.wa.gov/firearms-faq>
- ▶ https://en.wikipedia.org/wiki/Gun_laws_in_Washington
- ▶ https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/
- ▶ <https://files.constantcontact.com/28d16a55201/10706296-a6b9-4a25-a158-8f2ea6cfa920.pdf>