

MODULE 7

Locations and Forums

Streets · government property · private property · schools · public jobs · platforms

First Amendment Law · Fall 2026 · Professor Jorge R. Roig

Where we are on the map

The branch my board calls Place of Speech.

MODULE 1

First Amendment Values

Truth • democracy • autonomy • tolerance

MODULE 1

Speech vs. Conduct

Pure speech • expressive conduct • government speech

MODULE 2

Content-Based vs. Content-Neutral

Strict against intermediate — and the exceptions

MODULES 4-6

Disfavored Categories

Incitement • solicitation of crime • threats • fighting words • defamation • commercial • sexual speech

MODULE 7

Place of Speech

Public forum doctrine. Where it happens does the work.

MODULE 3

Four Facial Failures

Prior restraint • vagueness • overbreadth • compelled speech

THROUGHOUT

Related Protections

Press • assembly → association • petition — and the religion clauses

Where the speech happens decides which test applies.

Whose street is it?

Two answers, forty years apart.

DAVIS, 1897

- The State owns the park.
- It may close it to speakers, like a house.

HAGUE, 1939

- Streets and parks are held in trust.
- Regulate them; do not close them.

“... time out of mind, have been used for purposes of assembly ... and discussing public questions.”

Four kinds of government property

The category decides the test.

Traditional public forum	Content: strict. TPM: Ward.	Streets, parks, sidewalks.
Designated public forum	Same rules while open.	A university's meeting rooms.
Limited public forum	Reasonable; viewpoint-neutral.	Student groups; after-hours school use.
Nonpublic forum	Reasonable; viewpoint-neutral.	Teachers' mailboxes; airports.

Viewpoint discrimination is out in every one of them.

Perry: the teachers' mailboxes

A rival union shut out. Status, or viewpoint?

THE COURT, 5 - 4

- A nonpublic forum.
- Access by status, not by view.

THE DISSENT

- It is viewpoint discrimination.
- The forum label is beside the point.

Subject matter and speaker identity: allowed. Viewpoint: never.

ISKCON v. Lee: the airport

A new kind of place. Is it a forum?

IS IT A FORUM? (5-4)

- No: too new to be traditional.
- Never opened on purpose.

THE TWO BANS

- No soliciting money: upheld.
- No leaflets: struck down.

History decides the category. Function decides nothing — yet.

What kind of place is it?

Sort each place, then name the test.

Sidewalk outside the Supreme Court	Traditional	Grace, 1983
University rooms opened to student groups	Designated	Widmar, 1981
A law school's student-group program	Limited	CLS v. Martinez, 2010
A polling place on election day	Nonpublic	Mansky, 2018
An airport terminal	Nonpublic	ISKCON, 1992
Specialty license plates	No forum: the State speaks	Walker, 2015

Grace, 461 U.S. 171 (1983) • Widmar, 454 U.S. 263 (1981) • CLS v. Martinez, 561 U.S. 661 (2010) • Mansky, 585 U.S. 1 (2018) • ISKCON (1992) • Walker (2015). Only ISKCON assigned.

Private property: usually no claim at all

The First Amendment binds the government, not the mall.

1946

Marsh: a company town is bound.

1968

Logan Valley: so is a mall.

1976

Hudgens: the mall is not.

1980

PruneYard: a State may give more.

2019

Halleck: hosting speech is private.

Hudgens: sorting pickets from protesters by their message would itself be content discrimination.

Tinker: the schoolhouse gate

The baseline for student speech since 1969.

THE ARMBANDS

- Black armbands against the war.
- Silent and not disruptive.

THE RULE

- Substantial disruption, shown.
- Not fear. Not discomfort.

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

Tinker, and what came after

One baseline, then four carve-outs.

1969

Tinker:
substantial
disruption.

1986

Fraser: lewd
speech at an
assembly.

1988

Hazelwood:
speech the
school sponsors.

2007

Morse:
promoting illegal
drugs.

2021

Mahanoy: off
campus, less
leeway.

Three carve-outs widen the school's power. The fourth narrows it.

Hazelwood and Morse

A school newspaper, and a banner across the street.

HAZELWOOD, 1988

- The paper was a class, not a forum.
- Legitimate pedagogical concerns.

MORSE, 2007

- Read as promoting drug use.
- Not political or social comment.

Tinker: may the school punish her speech? Hazelwood: must it sponsor it?

Mahanoy: off campus

A weekend post, and three reasons the school's reach shrinks.

1

Not the parent

Off campus, the school rarely stands in their place.

2

The whole day

Add off-campus rules and nothing is left unregulated.

3

Nurseries of democracy

Schools should protect unpopular speech too.

Not a rule. Three reasons for less leeway, applied case by case.

The public workplace

Pickering balances. Garcetti asks a question first.

1

Part of the job?

Then no protection (Garcetti).

2

A public concern?

If not, no claim (Connick).

3

The balance

Citizen's interest against the employer's (Pickering).

Duty first, then concern, then balance.

Citizen or employee?

Sort the speaker, and the case decides itself.

A teacher's letter to the paper	Citizen	Protected after the balance.
A prosecutor's internal memo	Employee	Unprotected (Garcetti).
Sworn testimony under subpoena	Citizen	Protected (Lane).
A coach's prayer after the game	Private speech	Protected (Kennedy).
A professor's lecture	Reserved	Garcetti left it open.

The military and prisons

Where deference to the institution does most of the work.

THE MILITARY

- A base is not a public forum.
- Discipline justifies more.

PRISONS

- Valid if reasonably related to prison goals.
- Deference to the warden.

The business of a base is “to train soldiers, not to provide a public forum.”

Platforms: whose speech, whose forum?

Three questions, three recent cases.

THE STATE'S ACCOUNT

- Lindke, 2024.
- Real authority, used in the post.

A PRIVATE HOST

- Halleck, 2019.
- Hosting speech is not a State job.

THE PLATFORM'S OWN SPEECH

- Moody, 2024.
- Curating a feed is expression.

First ask whose speech it is. Only a State actor has a forum to police.

Moody v. NetChoice, 2024

Two States told platforms what they must carry.

THE LAWS

- Florida and Texas limited moderation.
- Carry candidates; no viewpoint removal.

THE COURT

- Vacated: redo the facial analysis.
- But curating a feed is expression.

“A State may not interfere with private actors' speech to advance its own vision of ideological balance.”

Current case: Olivier v. City of Brandon

A street preacher, a protest zone, and a question the Court left open.

THE ORDINANCE

- Protests near the amphitheater at events.
- Only inside a designated protest area.

THE COURT, 9-0

- A past conviction does not bar the suit.
- Only future enforcement is at stake.

Whether he may sue: decided. Whether the zone is valid: open — and it is today's question.

For discussion: one town, five places

A hypothetical. Every case in this module is in play.

THE TOWN

- A fenced protest zone at the concerts.
- A library room: no religious instruction.
- The mayor's account blocks critics.
- A student's weekend video.
- A planner's op-ed; she is fired.

QUESTIONS FOR DISCUSSION

1. Content line, or neutral rule?
2. Subject matter, or viewpoint?
3. State action, then a forum?
4. On campus or off?
5. Citizen or employee?

Module 7 on one slide

One line per rule.

THE LINE, ONE RULE AT A TIME

- Traditional forums: strict for content; Ward for manner (Hague; Perry).
- Limited and nonpublic: reasonable and viewpoint-neutral (Perry; ISKCON).
- Private property: no claim unless the owner is the State (Hudgens).
- Schools: Tinker, three carve-outs, less leeway off campus (Mahanoy).
- Public employees: duty, then concern, then balance (Garcetti; Pickering).
- Platforms: curating a feed is their own speech (Moody).

Next — Module 8: Free Exercise, Part I.