

QUESTION

If a public library in New York allows groups and individuals to reserve and use rooms for meetings, can that library deny access if the use is for a group advocating removing books from libraries or another goal antithetical to the core values or existence of the library?

LOSA ATTORNEY RESPONSE

The short answer is no: libraries cannot restrict the use of library facilities based on the viewpoint of the group. Whether it be groups seeking to ban books, white supremacists, or anarchists, controlling access based on viewpoint or content is not permitted by the First Amendment.

When evaluating what restrictions on speech or expressive activity are permissible, a threshold question is “what type of ‘forum’ does the restriction affect?” There are three types: public forums, limited public forums, and nonpublic forums. Think of it as a spectrum, with sidewalks and parks being the most public forums and private offices being the least public forums. The way the law works, as the forum becomes more public, the government must meet higher and higher standards in order to justify regulation.

Of the three types of the forums, the only relevant one for our purposes is the “limited public forum.” That is because courts uniformly sit libraries within this category.¹ For limited public forums, there is a two part test to determine whether the restriction is permissible: any restriction must be (1) “viewpoint neutral” and (2) “reasonable in light of the purpose served by

¹ See, e.g., *Neinast v. Bd. of Trustees of the Columbus Metro. Lib.*, 346 F3d 585, 591 [6th Cir 2003] (“For the purposes of First Amendment analysis, the Library is a limited public forum.”); *Kreimer v. Bur. of Police*, 958 F2d 1242, 1259 [3d Cir 1992]; *Faith Ctr. Church Evangelistic Ministries v. Glover*, 462 F3d 1194, 1204 [9th Cir 2006]).

the forum.”² “Viewpoint neutral” means that restrictions on expression must be based on the category of the expression, rather than the content of that expression. This is the reason why, in our introduction, we noted that the library must provide meeting rooms to book clubs and book banning organizations on equal footing – since the type of activity they’re engaging in is similar.

The Second Circuit Court of Appeals (the highest authority in New York below the Supreme Court of the United States) phrased the viewpoint neutrality requirement as follows: “in a limited public forum, government is free to impose a blanket exclusion on certain types of speech, but once it allows expressive activities of a certain genre, it may not selectively deny access for other activities of that genre.”³

This raises the question, what is a category of speech that a library may restrict? One such restriction, upheld by the Ninth Circuit Court of Appeals, was a rule that no religious worship services were permitted in meeting rooms.⁴ Forums such as libraries and schools also frequently ban “political activity” and these restrictions have also been upheld.⁵ These restrictions are upheld because they apply to entire categories of activities (rather than prohibiting specific religions or specific school courses), but also because of the second requirement: reasonableness in light of the purpose served by the forum.

What does it mean for a restriction to be reasonable in light of the purpose? Well, taking the above example of prohibiting religious worship, the “purpose” of libraries is not to serve as houses of worship. According to the Supreme Court, a library is “a place dedicated to quiet, to

² *Faith Center*, 462 F3d at 1203.

³ *Travis v. Owego-Apalachin Sch. Dist.*, 927 F2d 688, 692 [2d Cir 1991].

⁴ *Faith Center*, 462 F3d at 1205-06.

⁵ *See, e.g., Campbell v. St. Tammany Parish Sch. Bd.*, 231 F3d 937, 940 [5th Cir 2000].

knowledge, and to beauty.”⁶ Courts have also upheld hygiene policies for libraries because unkempt personal hygiene interferes with the library’s mission of providing the maximum benefit to the community.⁷

Let’s now apply this standard to the question at hand. What type of restriction prohibiting anti-library groups to meeting would pass the reasonableness test? We know that, because of the viewpoint-neutrality requirement, any rule that applies differently based on the content being discussed would not be allowed. So what about a rule that prohibited *all* groups from meeting in the library? Well, that might be upheld. In *Kreimer*, the Court upheld a rule that provided: “Patrons shall be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials shall be required to leave the building.”⁸ The Court reasoned that “The Library need not be used as a lounge or a shelter.”⁹ As such, perhaps a ban on every type of meeting would be permissible – but such a ban would also go against many libraries’ core values. Therefore, as much as one may disagree with the viewpoints of certain groups and/or patrons, restricting services because of those views is just not allowed under the First Amendment.

On a practical level, evaluating these various tests and circumstances can be difficult for a library to untangle. As such, members are well-advised to adopt library room rental and room use policies. One of the best ways to minimize exposure is to require that meeting rooms be checked out as resources to individuals who have library privileges, rather than rented or provided as a

⁶ *Brown v. Louisiana*, 383 U.S. 131, 142 [1966].

⁷ *Kreimer*, 958 F2d at 1264 (upholding such a requirement even under the highest “strict scrutiny” standard for public forums).

⁸ *Id.* at 1262.

⁹ *Id.*

gratuity. This is because, if rooms are available for free to anyone, there are concerns about the use being an “inurement.” Though addressing that question goes outside the scope of our discussion here, we previously addressed the problem of inurement in [an "Ask the Lawyer" RAQ](#). In order to assist OWWL member libraries in obtaining thoughtful, goal-oriented compliance, accompanying this answer is a flexible room usage template and policy.

In summary, (1) avoid restricting room usage based on viewpoint, (2) consider the library’s meeting room usage policy, and (3) be careful with free room usage so as not to run afoul of the inurement problem. As always, consult your attorney with specific questions!