

MARY MINOW • TOMAS A. LIPINSKI • GRETCHEN McCORD



The Library's Legal Answers for

MEETING ROOMS AND DISPLAYS



THE LIBRARY'S LEGAL ANSWERS FOR MEETING ROOMS AND DISPLAYS

Mary Minow
Tomas A. Lipinski
Gretchen McCord



An imprint of the American Library Association
Chicago | 2016

ABOUT THE AUTHORS

MARY MINOW is an Advanced Leadership Initiative fellow at Harvard University. She has been a consultant with LibraryLaw.com since 1998. She advises libraries on free speech, privacy, copyright, and related issues. Minow has a JD from Stanford University, an AMLS from the University of Michigan, and a BA from Brown University.

TOMAS A. LIPINSKI has worked in a variety of legal settings including the private, public, and nonprofit sectors. He received his JD from Marquette University Law School, LLM from The John Marshall Law School, and PhD from the Graduate School of Library and Information Science. Lipinski currently serves as Professor and Dean of the University of Wisconsin–Milwaukee’s *i*-School, the School of Information Studies.

GRETCHEN McCORD is an attorney, consultant, and trainer specializing in copyright, trademark, and privacy law, and other legal issues related to digital information. She is the founder and principal of Digital Information Law, which provides a variety of online and face-to-face training in copyright law and related areas. McCord received her JD from the University of Texas School of Law, MSIS from the University of North Texas, and BA from Rice University.

COPYRIGHT

© 2016 by Mary Minow, Tomas A. Lipinski, and Gretchen McCord

Extensive effort has gone into ensuring the reliability of the information in this book; however, neither the publisher nor the authors make any warranty, express or implied, with respect to the material contained herein.

ISBNs: 978-0-8389-1440-3 (ePub); 978-0-8389-1441-0 (Kindle)

ALA Editions purchases fund advocacy, awareness, and accreditation programs for library professionals worldwide.

PREFACE

WE'RE LAWYERS WITH LIBRARY DEGREES. AS EDUCATORS AND consultants, we work with a variety of library organizations. As new libraries are built or remodeled to include more meeting rooms, and as the law has evolved in that area, particularly with regard to the use of meeting rooms for religious purposes, we started hearing questions, some revealing confusion or misunderstandings. We continue to read of libraries, for example, that have policies that do not allow religious groups to use library meeting rooms. While there are still nuances with regard to the use of the rooms for religious services, it is clear, at this point, that a room that is open to general public use may not restrict religious groups who wish to book the room for any other purpose.

Bilingual in legalese and library jargon alike, we aim in this, the second in a series of Library Legal Answers books, to give straightforward answers to common questions that arise in your library work and to help you avoid or minimize legal problems. For your attorneys, trustees, and interested laypersons, we cite relevant laws and cases in end notes.

Our goal is that this information will be a good starting point for addressing your legal issues. The law is ever-developing and also often jurisdiction specific. Be sure to consult a lawyer in your jurisdiction if you have a specific issue to address.

Libraries are the heartbeat of the community. We treasure their role as a gathering place, where people can connect with each other around shared interests. Libraries' exhibit spaces, bulletin boards, and giveaway racks encourage an exchange of ideas on local issues and notices of happenings around town. Here, we've given attention to addressing, from the perspective of the law, what could go wrong in such situations. The good news is that with awareness of these legal issues, and steps you can take, you can go forward with more confidence.

MARY MINOW'S STORY

WHEN I WORKED AS A PUBLIC LIBRARIAN, BOOKING MEETING ROOMS AND setting up displays, it never occurred to me that I was acting as a government agent, and that my bookings were subject to First Amendment review. I shudder to recall one Saturday when I got a flurry of phone calls from churches, vociferously complaining that the group Eckankar was planning to show a film in our community room that afternoon. If I didn't cancel it, I was told, there would be pickets and demonstrations.

I immediately checked into the situation. Yes, Eckankar had booked the room. The churches were not opposed to Eckankar's message—it teaches about the eternal soul and “soul travel.” The churches were upset because they themselves had wanted to use the community room and had been turned away by our policy that said “no religious groups” could use the room. Eckankar, said the protesters, was a religious group, and we had let its followers in. What did I do? I talked to Eckankar, made a determination that, yes, indeed, it was a religious group. I felt fortunate that the group did not dispute that characterization. This meant that under our policy, they could not use the room. I told them that we would honor today's booking, but they would need to look elsewhere for future meetings. The protesters accepted my solution, and I felt I had solved a crisis.

I didn't realize how lucky I was that Eckankar's followers—and the churches, for that matter—did not file a lawsuit against us. Had they done so, they would have won, even though our policies were not unusual. I didn't know that I had been acting as an agent of the government and was a custodian of a “public forum,” a soapbox where citizens have First Amendment rights of expression. I had no idea that my library's community room was such a sacred space, virtually guaranteed to all community members on an equal basis, regardless of the content of their meetings.

This book describes the legal context of public library spaces that have been opened up to public expression, such as community rooms, auditoriums,

public display walls, and exhibit cases. These public spaces, known in legal parlance as “public forums,” trigger a “strict scrutiny” First Amendment analysis whenever content restrictions are placed on their use.

CONTENTS

Libraries and Categories of Public Forum

Type of Library Matters

[Q1: Are all library meeting rooms and display areas protected by the First Amendment?](#)

Spaces in Public Institutions that are Off Limits to the Public

[Q2: Must all library meeting rooms and display areas in public institutions be open to all users?](#)

[Q3: If my meeting room or display area is open to the public, is it a “public forum”?](#)

Nonpublic Forum: The Library’s Technical Services Areas and Offices

[Q4: What types of speech are protected in the library meeting rooms and display areas that are considered “public forums”?](#)

Speech Content Regulations

[Q5: May the library close off public use of a space to deal with controversial issues?](#)

[Q6: If the library does not choose to close the space, how should it treat displays or meetings that concern controversial issues?](#)

[Q7: How should the library treat displays or meetings that concern religious issues?](#)

Q8: Is there a difference between meetings that have religious content and meetings that actually conduct religious services?

Q9: Isn't there a conflict between church and state?

Q10: How should the library treat displays or meetings that concern political issues?

Q11: How should the library treat displays or meetings that use hate speech?

Q12: Can you give an example of a library that allowed a hate speech group to use its facilities?

Q13: May a library demand extra fees or deposits for security expenses if a speaker is expected to draw an angry crowd?

Q14: I don't understand. Surely you don't mean that I must allow a group into the library that is threatening my patrons?

Q15: So the library does not have to put up with "fighting words"?

Q16: What if the group is inciting a riot?

Q17: How should the library treat displays or meetings that concern sexual issues?

Case Study: Manhasset Public Library

Q18: May the library prohibit birthday parties, weddings, and other private events?

Q19: Are there any situations in which the library can stop a program or a display if it is really, really upsetting to patrons and staff?

Speech Regulations: Content-Neutral

Q20: Our policy limits the amount of time for which a group can reserve the meeting room or display space. Is that okay?

Meeting Rooms: Special Considerations

[Q21: I see a big difference between hate speech spewed forth live in a meeting room and hate speech quietly sitting on a giveaway rack. Does the law see a big difference, too?](#)

[Q22: What if the meeting gets out of hand—too loud, or worse?](#)

[Q23: What if the group has discriminatory policies?](#)

Library Sponsored Meetings and Displays

[Q24: A librarian creates a display. A colleague disagrees with the inclusion of a book in the display. Both people are professionals. No one is requesting that the book be removed from the library. The director is brought in. Is there law governing this?](#)

Leafletting and Solicitation

[Q25: Does the public have the right to leaflet, picket, or solicit funds inside or outside library spaces?](#)

Professional Guidance

[Q26: What guidance does the American Library Association offer on these issues?](#)

Appendix: Cases Concerning or Relating to Libraries, Meeting Rooms, and Exhibit Spaces

Libraries and Categories of Public Forum

Type of Library Matters

Q1: Are all library meeting rooms and display areas protected by the First Amendment?

No. If your library is private, or part of a private institution, the First Amendment is not applicable, with few exceptions.¹ The First Amendment restricts *government* from abridging free speech. Private institutions are not constrained, even if their meeting rooms are open to the public.

Spaces in Public Institutions that are Off Limits to the Public

Q2: Must all library meeting rooms and display areas in public institutions be open to all users?

No. First of all, each library can designate certain rooms or display areas to be off-limits to users. Not all government spaces are open to all—you needn't entertain all groups in your office space, technical services area, etc. However, once a library opens a room or display area for public use, it is considered a "designated public forum." Designated forums are treated as though they are "public forums," and the library may not control which messages are expressed there (unless the forum is also determined to be "limited," as explained below).

Second, some libraries may restrict their resources to a "limited" purpose, such as serving a defined community. A public or private academic college may limit its meeting rooms to its academic community. A school library may limit its space to the school community. However, a public library, being open to the public, must welcome the public into its meeting rooms.

Q3: If my meeting room or display area is open to the public, is it a

“public forum”?

Yes. According to court cases, public library meeting rooms are *designated public forums*.² That is, if a meeting room is open to the public for expressive activity, it may not be restricted on the basis of the content (topic) or viewpoint of a group’s speech. To take one example of an impermissible *content* restriction, a library may not make a policy that expressly forbids groups that wish to discuss birth control while at the same time allowing the chess club to book the room. As illustration of an impermissible *viewpoint* restriction, would be that a library may not allow a pro-choice group to use the room while denying access to a pro-life group.

The term “public forum” emerged in First Amendment jurisprudence in 1939, when the Supreme Court held that the government does not have absolute discretion to control speech in public places.³

Two court cases found public library meeting rooms to be a type of “public forum” and struck down rules that denied religious groups the use of the public space.⁴

Current public forum doctrine applies a three-tiered system: government property is either a “traditional public forum,” a “designated public forum,” or a “nonpublic forum.”⁵

Traditional Public Forum: The Library’s Sidewalks

The first category, “traditional public forums,” are places traditionally used for purposes of assembly, communication, and public debate: parks, streets, and sidewalks.⁶ Library meeting rooms and display areas do not fit into this category. However, some library sidewalks fit into this category, and library rules restricting leafleting or other speech in such areas should only be made after consultation with an attorney.

Designated Public Forum: The Spaces Government Opens to Public Expression

The second category, the “designated public forum,” is public property that the government has opened for use by the *public* as a place for expressive

activity, such as a public auditorium.⁷ This term is used differently by different courts; however, the bottom line is that if the government designates space for public expression (beyond the traditional streets, parks and sidewalks that constitute the “traditional public forum” it will be considered a designated public forum. Thus, some library meeting rooms and display areas fit into this category, if the public is allowed to use the spaces.

Library rooms and display areas that are used *only* by the library itself are not considered part of the public forum. For example, perhaps a book display case is only used by the library, or even by a library support group such as the Friends of the Library to house its book sale. An outside group would not have a right to put its displays in that area. Perhaps a meeting room is used only for staff meetings, but is available for Friends group meetings, or for a volunteer literacy program that the library participates in. The library may say that such spaces will only support library group activities. Other public groups may not use the facilities for their own expressive activities, and the space is not a designated public forum.

Limited Public Forum: The Library and Its Public Meeting Rooms and Display Areas

The term “limited public forum” is not used in a consistent manner. Some courts discuss a limited public forum as though it is a nonpublic forum; others treat it more as a subcategory of the “designated public forum,” subject to the full protections of the public forum, and limited only by purpose. The *Kreimer v. Morristown* case examined the mission of the public library and discussed the difference between a library reading room and a street corner. (*Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992).) The library was open for a “limited purpose,” that of *reading or receiving information*, whereas the reading room was not open for expressive activity, such as making speeches in the reading room. The court said that the public library was a limited public forum, which it considered a type of designated public forum, because even the library meeting rooms and display areas are open for limited expressive activity; for example, the display areas may be limited to printed materials.⁸

What if the library policy goes one step further and says that the space may

only be used for “educational purposes”? In *Loudoun Mainstream v. Board of Trustees*, the court found that content-based restrictions in limited public forums are treated with the same strict scrutiny as traditional public forums.⁹ Some commentators think there is legal justification in limiting a limited public forum by purpose; others do not.¹⁰ One way to approach limited forums is to think of them on a sliding scale basis. In general, the more restrictive the criteria for admission and the more administrative control over access, the less likely a forum will be deemed public.¹¹ This is a very gray area, and any restrictions on the basis of purpose should be carefully reviewed by legal counsel.

One commentator sees limited public forums as places that by design are content based. For example, after-school use of classrooms by the public for parenting educational purposes only. Even when courts allow content based restrictions, if a limited public forum is established, the institution may not restrict based on viewpoint. That is, God-centered parenting and “humanist”-centered parenting classes must both be allowed.¹²

Nonpublic Forum: The Library’s Technical Services Areas and Offices

The third category is the “nonpublic forum.” These are spaces devoted to library-related uses such as technical service areas, staff offices, and the like. Libraries may also have meeting rooms and display areas that fit into this category. For example, a library may have a room that is only used for library staff meetings, or a display area that is only used to show library books. If challenged, a library’s exclusion of public speech in these areas will nearly always favor the library’s decisions. In legal terms, this is seen as an extremely low legal hurdle, known as the “reasonable” test. That is, if a library can make any justification that isn’t wholly arbitrary, it is likely to be upheld in any legal challenge.

Q4: What types of speech are protected in the library meeting rooms and display areas that are considered “public forums”?

Almost all speech is protected by the First Amendment in these areas. This

includes controversial, religious, and political speech, as well as most hate speech. This means that once the library opens up its meeting rooms and display areas to public use, it cannot then discriminate on the basis of content, with rare exceptions.

Speech Content Regulations

When the government restricts speech in a public forum (including designated public forums and limited public forums) on the basis of content or viewpoint, the courts generally apply a tough legal test to the restriction, known as “strict scrutiny.” When this standard is used, the courts usually overturn the governmental speech restriction. As law professor Gerald Gunther famously put it, strict scrutiny is “strict” in theory and often “fatal” in fact.¹³ In order to survive a case that is judged under the strict scrutiny standard, the government (i.e., a library that restricts speech) must show that there is a “compelling interest” and that the measure is narrowly tailored to use the “least restrictive means” to meet that interest.¹⁴

Q5: May the library close off public use of a space to deal with controversial issues?

Yes, at least that was the ruling in a federal district court in Georgia in 2002. A publisher sued a public library when it removed its publication, *The Gay Guardian*, from the “free-literature” lobby table. The library had received complaints and responded by restricting the table to government and library-generated materials. While the publisher argued that the library censored unwanted speech, the library maintained that it had the right to close any forum it created. The parties agreed that the public library was a limited public forum. The front lobby of a public building, according to the court, was a hybrid between a limited and a nonpublic forum. The library could decide to facilitate free expression in its front lobby (thus making it a limited public forum). The library permitted access to *The Gay Guardian* and “by definition, all other speech ugly and beautiful elsewhere in the Library.” (*Gay Guardian*

Newspaper v. Ochoopee Regional Library, 235 F. Supp. 2d 1362 (S.D. Ga. 2002).) The Library did not argue that if it had kept its lobby table open and excluded only that paper, it would be violating the First Amendment. The decision also cites nonlibrary decisions that found that First Amendment principles did not prevent a city from closing a public forum. Finally, the court opinion states: “Because the Library’s forum closing equally affects both gay and non-gay interests including Sons of Confederate veterans who might also wish to distribute their own free literature the Court concludes that plaintiffs likely will not prevail...” (Id.)

Q6:If the library does not choose to close the space, how should it treat displays or meetings that concern controversial issues?

The heart of the First Amendment is the protection of controversial speech. As librarians know from book selection, one person’s vulgarity is another person’s lyric.¹⁵ In 2001, for example, the mayor of Anchorage, Alaska, ordered the removal of a gay pride exhibit at the city’s Loussac Library. The American Civil Liberties Union filed suit, and a federal judge ordered its reinstatement. The city agreed to revise its meeting room policy and to pay \$10,000 in legal fees to settle.¹⁶

Q7:How should the library treat displays or meetings that concern religious issues?

In a Wisconsin library court case, a patron wished to book the meeting room for a presentation on creationism but was turned away. He sued and won; the library had to allow him to use its meeting room.¹⁷ The court found significant the fact that the mission statement of the library indicated that it served a wide variety of community educational interests. This was reflected in its collection development policies and practices, and was found inconsistent with the library’s unwillingness to extend the same attitude to the use of its meeting room; that is, it had books on evolution as well as creationism in its collection. The decision provides an excellent case study of the legal scrutiny that a court might apply to library policies and practices. In a Fifth Circuit case in 1989, the Concerned Women for America (CWA) wished to use a library auditorium

for a prayer chapter's meeting and to pray over abortion. The CWA won; the library had to allow the prayer chapter into its meeting room.

The U.S. Supreme Court has held that religious speech in public school classrooms used after hours is viewpoint (not content) based. This means that even if a forum is determined to be a nonpublic forum, it *still* cannot limit religious speech.¹⁸

Q8: Is there a difference between meetings that have religious content and meetings that actually conduct religious services?

Recent court cases deal precisely with this issue. In *Faith Center Church Evangelistic Ministries v. Glover* (No. C 04-03111 JSW. (N.D. Cal. June 19, 2009)), a public library was sued over its policy that prohibited the use of library meeting rooms for "religious services." In 2004, the leader of a nonprofit religious corporation applied to use the meeting room, identifying herself as a "pastor" and stating that the group wanted to use the room for "prayer, praise and worship open to public, purpose to teach and encourage salvation through Jesus Christ and build up community."

The Ninth Circuit Appellate Court found that the library could restrict "religious services" (though not "religious use") when the group itself defined its use as a "religious service."

The case was sent down to the federal district court to see if the policy would violate the Establishment Clause if it required a librarian to determine whether it was "worship."

The U.S. Supreme Court recently declined to hear an appeal of a case in the Second Circuit Court of Appeals that ruled that a state policy prohibiting the use of public school buildings for religious worship services is constitutional. The Court found that the Free Exercise Clause did not entitle the religious group to a government-subsidized place to hold religious worship services. In the case, the group acknowledged its intention to conduct religious worship services, and there was no evidence that the government would need to make such a determination. (*Bronx Household of Faith v. Bd. of Educ. of NY*, 750 F. 3d 184 (2014).)

Q9: Isn't there a conflict between church and state?

There could be a conflict if the library is involved in determining whether a group's program involves worship or not. The group itself may so determine, but the library must not entangle itself.

It's important to recognize that it is not an entanglement to allow religious groups or services on an equal basis, such as first-come, first-serve. According to the United District Court for the Eastern District of Wisconsin, the Establishment Clause did not justify the library's ban on religious instruction. Because the library granted access to a wide variety of nonreligious private organizations, there was no "realistic danger that the community would think that the [library] was endorsing religion or any particular creed, and any benefit to religion or the Church would have been incidental."¹⁹

A federal appellate court in Mississippi also said that the Establishment Clause was not at issue. "In the absence of empirical evidence that religious groups will dominate the use of the library's auditorium, causing the advancement of religion to become the forum's 'primary effect,' an equal access policy will not offend the Establishment Clause."²⁰

Q10: How should the library treat displays or meetings that concern political issues?

Political speech is at the core of the First Amendment. It is strongly protected by the Constitution. The case in Wisconsin centered on religious speech, but the court discussed in passing the library's restriction on "politically partisan" groups. It said that the "political partisan" exclusion was narrow, covering only a small subcategory of political speech, apparently covering only political party meetings. "Thus, the exclusion appears to leave untouched a substantial amount of political speech, including discussion of all manner of controversial subjects such as abortion, homosexuality, flag burning, school prayer and race relations, so long as the speech does not occur at a politically partisan meeting."²¹

It would not be surprising if a politically partisan group were to challenge a restrictive policy and win.

Q11 How should the library treat displays or meetings that use hate speech?

The term “hate speech” covers a range of speech—most of it protected by the First Amendment, but some that is not. *Black’s Law Dictionary* defines “hate speech” as “speech that carries no meaning other than the expression of hatred for some group, such as a particular race, esp. in circumstances where the communication is likely to provoke violence.”²² Library policies should not treat hate speech any differently from other controversial speech.

Q12 Can you give an example of a library that allowed a hate speech group to use its facilities?

Yes. Matt Hale, leader of the World Church of the Creator, a racist organization, was allowed to use the meeting room of the Bloomington (Ill.) Public Library on October 28, 2000. The library’s attorneys said that the library could not ban Hale from the meeting room. The library could limit a group’s use of the meeting room to six times a year and no more than once a month. This would apply, however, to any group.²³

Hale filed a federal lawsuit against the Schaumburg Township District Library on March 29, 2001, when it would not let him speak in its meeting room on the topic of “white pride.” Reportedly, the library board cited its policy disallowing meetings that might disrupt library functions and presented a potential for violence. Hale charged that the board could not refuse the request because of potential actions by demonstrators. “It’s the police’s job and the library’s job to make sure that I can give a speech without having altercations or disturbances,” he said.²⁴ Five months after the library trustees canceled his meeting, the library and Hale came to an agreement that allowed Hale to hold a meeting on a Saturday evening after the library was closed. Director Mike Madden told *American Libraries* that it became apparent that the presiding judge saw the overriding issue as the First Amendment and not public safety.

Q13 May a library demand extra fees or deposits for security expenses if a speaker is expected to draw an angry crowd?

Probably not. The Supreme Court has ruled that a fee based on the anticipated crowd response necessarily involves the examination of the content of the speech, making it nearly impossible to enforce (i.e., the strict scrutiny standard applies).²⁵

Q14I don't understand. Surely you don't mean that I must allow a group into the library that is threatening my patrons?

The First Amendment does not protect actual, specific "threats." A threat must be a "true threat" with a specific target, however. This must be distinguished from political hyperbole. Political hyperbole, even if "vituperative, abusive and inexact," is protected by the courts against a "background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."²⁶

For example, if a library patron says all civil servants are scum, he is participating in robust debate. But if he says to a clerk, "I'm going to knock your head off, you government scum," these are likely to be "fighting words."

Q15So the library does not have to put up with "fighting words"?

That's right. According to the Supreme Court, "fighting words" are epithets reasonably expected to provoke a violent reaction if addressed toward an "ordinary citizen." The Supreme Court held that "such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."²⁷

Q16What if the group is inciting a riot?

The key question here is whether the group's program is merely one of teaching abstract doctrines, or is it actual incitement? The first is protected by the First Amendment, even if it includes the advocacy of force against another group, for example, like that of the Nazis marching in Skokie, Illinois. The line is drawn, however, "where such advocacy is directed to inciting or

producing imminent lawless action and is likely to incite or produce such action.”²⁸ This is incitement, and can be illegal. Much as you might find it abhorrent, offensive leaflets in your giveaway racks do not incite imminent lawless action. In the community room, with live speakers, the possibility of incitement is increased. If, for example, a white-power group is using your community room and says, “Nonwhite children shouldn’t be mixing with white children,” that is protected free speech. If the speaker said, “Let’s go into the children’s room and round up all the nonwhites,” that would be incitement.

Q17 How should the library treat displays or meetings that concern sexual issues?

Most speech that concerns sexual issues is protected by the First Amendment and should be permitted by the library. Three narrow categories of sexual speech, however, are not protected, and federal and state laws may outlaw it: child pornography, obscenity, and “harmful to minors” material. These categories are much more narrowly defined by law than the general public conception of “pornography,” a term which defies legal definition; members of the public may use the term to describe anything from the latest XXX-rated website to the current *Sports Illustrated* swimsuit edition.

Case Study: Manhasset Public Library

A “no nudes” policy at a public library was challenged by an artist who had been invited to exhibit in the library, and then asked to remove her work when it was discovered that three paintings included “semi-nude females.” The library lost the case in court. In an unpublished opinion, a federal district court awarded the artist an undisclosed sum and a guarantee that she would be allowed to display her work in the library. The court prohibited the removal of paintings of “semi-nude females” from the community room of a public library.²⁹

Q18 May the library prohibit birthday parties, weddings, and other

private events?

Yes. The library may choose to allow bulletin board, display case, and meeting room space access only for announcements and events that are free and open to the public. It may in fact impose a wide range of limitations that are not based on content such as nonprofit status, local zip code, etc. Alternatively, the library may choose to allow private groups to use the space, unless there are local regulations of any type that prohibit this.

Q19 Are there any situations in which the library can stop a program or a display if it is really, really upsetting to patrons and staff?

Yes, but this is generally not enough of a reason. To restrict speech, a library must show that (1) *it has a compelling state interest*, and (2) *the speech restrictions are narrowly drawn to achieve that end.*³⁰ This standard is extraordinarily difficult to reach, and libraries should amass a great amount of evidence to support both of these factors before pursuing a content-based speech restriction. A meeting with an attorney is definitely advised before a library takes such an action.

Speech Regulations: Content-Neutral

Q20 Our policy limits the amount of time for which a group can reserve the meeting room or display space. Is that okay?

The library may include reasonable “time, place, and manner” restrictions on the use of its meeting rooms and display areas. Such regulations must be content neutral, both in the written policy and as it is applied. For example, the library may state that “No group may reserve the room more than one time per week.” A content-neutral regulation will be upheld if “it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”³¹

The library should be prepared to show that it applied the policy uniformly, without singling out groups it liked or disliked. Even content-neutral time,

place, and manner restrictions can be applied in such a manner as to stifle free expression. Adequate standards must be set to avoid the application of standardless discretion by the library staff.³²

Meeting Rooms: Special Considerations

Q21 It see a big difference between hate speech spewed forth live in a meeting room and hate speech quietly sitting on a giveaway rack. Does the law see a big difference, too?

It does to a certain extent. Only live speakers, not quiet print, can “incite imminent lawless action.” That is why virtually all books containing hate speech that the library might buy are protected. The “*Hit Man* case” is an exception, but it is so narrow that it’s mentioned here only because it was a high-profile case. In that 1998 case, the book was used as a manual to kill three people. Its publisher, Paladin Press, stipulated that its book was marketed to potential hired killers, and was enjoined by the court from distributing further copies.³³

Q22 What if the meeting gets out of hand—too loud, or worse?

This is a good opportunity to enforce content-neutral meeting room regulations, such as caps on noise levels. The regulations must be enforced evenly, to all groups, abiding by the same criteria. A summer reading celebration with music would need to meet the same noise restrictions as a meeting with an angry crowd.

Although restrictions based on expected audience reactions are content-based, restrictions based on the group’s *own* past behavior can be constructed as content-neutral. For example, a rule that an applicant may not use a room if it has damaged library property and not paid for it in the past is based on verifiable behavior, not speech content. The Supreme Court recently examined content-neutral rules enforced by the Chicago Park District and allowed the government a wide berth in enforcing such rules.³⁴

Q23 What if the group has discriminatory policies?

The library cannot itself discriminate against a group, even if it has discriminatory policies or beliefs. The library must enforce its own policies, however, of open access to the room. Unless the library allows private groups to rent the room for private meetings, all uses must be open to the public on a nondiscriminatory basis.

Library-Sponsored Meetings and Displays

Q24A librarian creates a display. A colleague disagrees with the inclusion of a book in the display. Both people are professionals. No one is requesting that the book be removed from the library. The director is brought in. Is there law governing this?

Although this is not a likely scenario that would be brought to court, one can look at how a court might decide this to help frame the answer. The institution has its own voice, and in this case, there is no issue involving the possible government censorship of a community's voice. The central question would not concern the merits of the display, but rather focus on "who decides?" within the institution.

Ultimate responsibility rests with the governing authority (city, university trustees, etc.) and it's the line of authority within the institution that determines who decides.

Leafletting and Solicitation

Q25 Does the public have the right to leaflet, picket, or solicit funds inside or outside library spaces?

A California state appellate case addressed these issues when a public library's governing board (the city council) adopted a policy that limited leafletting. Leafletting was allowed only in a specific "free speech area" in front of the library (by reservation). Leafletting was prohibited if it involved solicitation. All leafletting of vehicles in the parking lot was banned, and the library also

prohibited “offensively coarse” language or gestures.

The court found that the area outside the library was a public forum, based on a close look at the physical characteristics of the space. The court distinguished the library outdoor space from the nonpublic forum determination made in a U.S. Supreme Court case concerning public sidewalks by a post office. In *United States v. Kokinda*, 497 U.S. 720 (1990), wrote the California court, there was no mention of a larger area in front of the post office with benches for people to congregate, read newspapers, sit and rest, and the like. Further, the determination was partially based on the California Constitution, which has broader free speech guarantees than the Federal Constitution.

The City argued that people professed the desire to not be approached by strangers. The Court wrote: “Such desires and complaints, while understandable, are not a legitimate basis for curtailing free speech.” (*Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1344 (2012).) The Court noted that patrons could continue to enter or exit the Library to avoid unwanted leaflets. Those entering the Library “are fully capable of saying ‘no’ to persons seeking their attention and then walking away, they are not members of a captive audience. They have no general right to be free from being approached.” (*Prigmore v. City of Redding*, 211 Cal. App. 4th 1322, 1344 (2012).) .

The ban on leafleting in the parking lot, however, was upheld under a safety rationale. (*Prigmore v. City of Redding*, 211 Cal. App. 4th 1322 (2012).)

Additionally, in June 2006, a federal district court granted a temporary restraining order against the cities of Lincoln, Omaha, and Grand Island, Nebraska, who had prohibited petitioners from collecting signatures on the grounds of libraries and other public buildings. The case was settled against the cities. The court said that the libraries and other local government agencies couldn’t prohibit petitions on streets, sidewalks, exterior courtyards, parks, and walkways that carry public pedestrian traffic. The ruling explicitly did not include steps into buildings or vestibules connected to such buildings. It did, however, include streets, sidewalks, and walkways adjacent to government buildings or offices located in strip malls, and streets, sidewalks, and walkways where temporary festivals are being conducted. The court wrote:

At this very early stage of the litigation, it appears that the policy at issue is a content-neutral restriction on expressive activity in traditional public fora which must be narrowly tailored to serve a significant state interest. While Omaha, Grand Island, and Lincoln have a significant state interest in maintaining clear access to its public buildings and events, controlling pedestrian traffic on sidewalks, and preventing disturbances, it is not necessary to remove all petition circulators from public areas to achieve those interests. These cities could enact legitimate time, place, and manner restrictions which limit the number of circulators in a given area or require that circulators remain a certain distance from public facilities, but a total ban on all petition circulators in public areas cannot be considered “narrowly tailored.” (Groene v. Seng, 2006 U.S. Dist. LEXIS 45174 (D. Nebr. June 29, 2006.)

Professional Guidance

Q26 What guidance does the American Library Association offer on these issues?

The American Library Association’s Library Bill of Rights includes a series of interpretations for specific issues. Below is a reprint of material from the ALA website. Any updates may be found at the links provided.

[Meeting Rooms](#) [links to ALA website]

An Interpretation of the Library Bill of Rights

Many libraries provide meeting rooms for individuals and groups as part of a program of service. Article VI of the [Library Bill of Rights](#) states that such facilities should be made available to the public served by the given library “on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.”

Libraries maintaining meeting room facilities should develop and publish policy statements governing use. These statements can properly define time, place, or manner of use; such qualifications should not pertain to the content of a meeting or to the beliefs or affiliations of the sponsors. These statements should be made available in any commonly used language within the community served.

If meeting rooms in libraries supported by public funds are made available to the general public for non-library sponsored events, the library may not exclude any group based on the subject matter to be discussed or based on the ideas that the group advocates. For example, if a library allows charities and sports clubs to discuss their activities in library meeting rooms, then the library should not exclude partisan political or religious groups from discussing their activities in the same facilities. If a library opens its meeting rooms to a wide variety of civic organizations, then the library may not deny access to a religious organization. Libraries may wish to post a permanent notice near the meeting room stating that the library does not advocate or endorse the viewpoints of meetings or meeting room users.

Written policies for meeting room use should be stated in inclusive rather than exclusive terms. For example, a policy that the library's facilities are open "to organizations engaged in educational, cultural, intellectual, or charitable activities" is an inclusive statement of the limited uses to which the facilities may be put. This defined limitation would permit religious groups to use the facilities, because they engage in intellectual activities, but would exclude most commercial uses of the facility.

A publicly supported library may limit use of its meeting rooms to strictly "library-related" activities, provided that the limitation is clearly circumscribed and is viewpoint neutral.

Written policies may include limitations on frequency of use and whether or not meetings held in library meeting rooms must be open to the public. If state and local laws permit private as well as public sessions of meetings in libraries, libraries may choose to offer both options. The same standard should be applicable to all.

If meetings are open to the public, libraries should include in their meeting room policy statement a section that addresses admission fees. If admission fees are permitted, libraries shall seek to make it possible that these fees do not limit access to individuals who may be unable to pay, but who wish to attend the meeting. Article V of the *Library Bill of Rights* states that "a person's right to use a library should not be denied or abridged because of origin, age, background, or views." It is inconsistent with Article V to restrict indirectly access to library

meeting rooms based on an individual's or group's ability to pay for that access.

Adopted July 2, 1991, by the ALA Council.

[ISBN 8389-7550-X]

[Exhibit Spaces and Bulletin Boards](#) [links to ALA website]

An Interpretation of the Library Bill of Rights

Libraries often provide exhibit spaces and bulletin boards in physical and/or electronic formats. The uses made of these spaces should conform to the American Library Association's Library Bill of Rights: Article I states, "Materials should not be excluded because of the origin, background, or views of those contributing to their creation." Article II states, "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Article VI maintains that exhibit space should be made available "on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use."

In developing library exhibits, staff members should endeavor to present a broad spectrum of opinion and a variety of viewpoints. Libraries should not shrink from developing exhibits because of controversial content or because of the beliefs or affiliations of those whose work is represented. Just as libraries do not endorse the viewpoints of those whose work is represented in their collections, libraries also do not endorse the beliefs or viewpoints of topics that may be the subject of library exhibits.

Exhibit areas often are made available for use by community groups. Libraries should formulate a written policy for the use of these exhibit areas to assure that space is provided on an equitable basis to all groups that request it. Written policies for exhibit space use should be stated in inclusive rather than exclusive terms. For example, a policy that the library's exhibit space is open "to organizations engaged in educational, cultural, intellectual, or charitable

activities” is an inclusive statement of the limited uses of the exhibit space. This defined limitation would permit religious groups to use the exhibit space because they engage in intellectual activities, but would exclude most commercial uses of the exhibit space.

A publicly supported library may designate use of exhibit space for strictly library-related activities, provided that this limitation is viewpoint neutral and clearly defined.

Libraries may include in this policy rules regarding the time, place, and manner of use of the exhibit space, so long as the rules are content neutral and are applied in the same manner to all groups wishing to use the space. A library may wish to limit access to exhibit space to groups within the community served by the library. This practice is acceptable provided that the same rules and regulations apply to everyone, and that exclusion is not made on the basis of the doctrinal, religious, or political beliefs of the potential users.

The library should not censor or remove an exhibit because some members of the community may disagree with its content. Those who object to the content of any exhibit held at the library should be able to submit their complaint and/or their own exhibit proposal to be judged according to the policies established by the library.

Libraries may wish to post a permanent notice near the exhibit area stating that the library does not advocate or endorse the viewpoints of exhibits or exhibitors.

Libraries that make bulletin boards available to public groups for posting notices of public interest should develop criteria for the use of these spaces based on the same considerations as those outlined above. Libraries may wish to develop criteria regarding the size of material to be displayed, the length of time materials may remain on the bulletin board, the frequency with which material may be posted for the same group, and the geographic area from which notices will be accepted.

Adopted July 2, 1991, by the ALA Council; amended June 30, 2004, and July 1, 2014.

[ISBN 8389-7551-8]

1. It is generally accurate to say that the First Amendment does not apply to private libraries. In California, however, the state Education Code applies the First Amendment to private secondary and post-secondary educational institutions. It provides that “School districts operating one or more high schools and private secondary schools shall not make or enforce any rule subjecting any high school pupil to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside of the campus, is protected from governmental restriction by the First Amendment to the United States Constitution or Section 2 of Article 1 of the California Constitution.” Cal. Educ. Code §48950(A) (2001). Student Robert J. Corry sued Stanford University based on a Stanford Speech Code that prohibited “discriminatory intimidation by threats of violence and also includes personal vilification of students on the basis of their sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin.” *Corry v. Stanford University*, No. 740309 (Super. Ct., Cal., Santa Clara County, Feb. 27, 1995) (order granting preliminary injunction), *available at*

<https://web.archive.org/web/20050419211842/http://www.ithaca.edu/fa>

Also, a private library or its parent institution may have adopted First Amendment principles in its policies.

2. *Kreimer v. Bureau of Police for the Town of Morristown*, 958 F.2d 1242 (3d Cir. 1992); *Concerned Women for America v. Lafayette County*, 883 F.2d 32 (5th Cir. 1989); *Pfeifer v. City of West Allis*, 91 F. Supp. 2d 1253 (E.D. Wis. 2000); *Mainstream Loudoun v. Loudoun County Library*, 2 F. Supp. 2d 783 (E.D. Va. 1998).

3. See *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 516 (1939) (reversing police officer’s refusal to issue permit to lease banquet halls to an organization with suspected communist associations).

4. *Pfeifer*, 91 F. Supp. 2d at 1253; *Concerned Women for America*, 883 F.2d at 32.

5. *Perry Education Ass’n v. Perry Local Educators’ Assn.*, 460 U.S. 37 (1983).

6. *Perry Education Ass'n*, 460 U.S. at 45 (calls streets and parks “quintessential.” “At one end of the spectrum are streets and parks which ‘have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.’” *Hague*, 307 U.S. at 515).

7. *Perry Education Ass'n*, 460 U.S. at 45.

8. See *American Library Association v. United States*, 201 F. Supp. 2d 401 (E.D. Pa. 2002), equating designated public forums with limited public forums when analyzing Internet access in a public library; see *Kreimer v. Morristown*, 958 F.2d 1242, 1259 (3d Cir. 1992), for a discussion of a library as a limited public forum, a type of designated public forum.

9. *Mainstream Loudoun v. Loudoun County Library*, 2 F. Supp. 2d 552, 561 (E.D. Va. 1998).

10. See Theodore George, Legal Update, “Censoring Internet Access at Public Libraries: First Amendment Restrictions,” 5 *Boston University Journal of Science & Technology Law* 11 (1999) (libraries as limited public forums are subject to strict scrutiny when making content-based restrictions). For the opposing view, see Mark S. Nadel, “The First Amendment’s Limitations on the Use of Internet Filtering in Public and School Libraries: What Content Can Librarians Exclude?,” 78 *Texas Law Review* 1117 (2000) (argues that even if libraries are classified as limited public forums, they make content-based decisions in book purchasing); and Brent L. VanNorman, Comment and Note, “The Library Internet Filter: On the Computer or on the Child?,” 11 *Regent University Law Review* 425 (1998/1999) (argues that libraries are nonpublic forums).

11. *Hopper v. Pasco*, 241 F.3d 1067 (9th Cir. 2000).

12. Matthew D. McGill, “Unleashing the Limited Public Forum: A Modest Revision to a Dysfunctional Doctrine,” 53 *Stanford Law Review* 929 (2000) (“‘limited public forum’ will refer to a forum that the government has opened for particular subjects or speakers,” at 935).

See decisions of *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); and *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (1995); and discussion of those cases in McGill, *Unleashing*, 943–945.

13. Gerald Gunther, Foreword, *In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 *Harvard Law Review* 1, 8 (1972). It should be noted that this standard might be changing. See, e.g., *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 201(1995) (“Finally, we wish to dispel the notion that strict scrutiny is ‘strict in theory, but fatal in fact’”).

14. *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115, 126 (1989). See also *American Library Association v. United States*, 201 F. Supp. 2d 401, 410 (E.D. Pa. 2002).

15. See *Cohen v. California*, 403 U.S. 15 (1971) (“one man’s vulgarity is another’s lyric”).

16. “Anchorage Exhibits Policy Stalled,” News Briefs for January 7, 2002, American Libraries, at <https://americanlibrariesmagazine.org/anchorage-exhibits-policy-stalled/> (visited July 26, 2016); “New Anchorage Library Policy to Allow Outside Exhibits,” News Briefs for August 6, 2001, American Libraries, at <https://americanlibrariesmagazine.org/new-anchorage-library-policy-to-allow-outside-exhibits/> (visited July 26, 2016); *Anchorage Lawsuit Settled, but Exhibits Are in Limbo*, News Briefs for July 23, 2001, American Libraries, at <https://americanlibrariesmagazine.org/anchorage-lawsuit-settled-but-exhibits-are-in-limbo/> (visited July 26, 2016).

17. *Pfeifer v. City of West Allis*, 91 F. Supp. 2d 1253 (E.D. Wis. 2000).

18. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

19. *Pfeifer*, 91 F. Supp. 2d at 1266, citing *Lamb's Chapel v. Center Moriches Union Free School District*, 508 U.S. 384, 385 (1993).

20. *Concerned Women for America v. Lafayette County*, 883 F.2d 32, 35 (5th Cir. 1989), citing *Widmar v. Vincent*, 454 U.S. 263, 275,

(1981).

21. *Pfeifer*, 91 F. Supp. 2d at 1263.

22. *Black's Law Dictionary*, 1407–1408 (7th ed. 1999).

23. “Library Can Limit Supremacist but Not Bar Him,” News Briefs for November 20, 2000, American Libraries, at <http://www.ala.org/online/news/2000/001120.html> (visited Dec. 20, 2000); Steve Arney, “Library Advised Not to Block Hale,” *Pantagraph* (Bloomington, Ill., Nov. 15, 2000).

24. *White Supremacist Sues Library after Speech Cancelled*, News Briefs for April 2, 2001, American Libraries, at <http://www.ala.org/online/news/2001/010402.html#matthale> (visited June 30, 2001).

25. *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

26. *Watts v. United States*, 394 U.S. 705 (1969), citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

27. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942).

28. *Brandenburg v. Ohio*, 395 U.S. 444, 446 (1969) (per curiam) (Ohio statute restricting speech was unconstitutional because it did not distinguish between persons calling for the immediate use of violence and those teaching an abstract doctrine about the use of force, at issue when a film showed a speech by a Ku Klux Klan chapter, asserting that revenge might be taken against the U.S. government if it “continues to suppress the white . . . race”).

29. *Bellospirito v. Manhasset Public Library*, No. 93-CV-4484, at 13–14 (E.D.N.Y. July 31, 1994), unpublished opinion (finding the library community room to be a “public forum that has been opened to the general public for at least certain categories of speech” and therefore subject to the “same standards as apply in a traditional public forum.” Cited in Daniel Mach, Note, “The Bold and the Beautiful: Art, Public Spaces, and the First Amendment,” 72 *New York University Law Review* 383 (MAY 1997). See also Marilyn C. Mazur, “Sex and Censorship: Dangers to Minors and Others? A Background Paper”

(March 1999), at http://www.ncac.org/issues/sex_censorship.html (visited Feb. 28, 2002); and Charles P. Wiggins, "Censorship and Visual Images: Issues with Examples from Public Libraries," LIS 615, Instructor: Beatrice Kovacs (Sept. 4, 1999), at http://home.att.net/~cpwiggins/librarianship/portfolio/censor_vis.html (visited Feb. 28, 2002). This student paper cites various sources from the professional library literature about the case.

30. *Perry Education Ass'n v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983).

31. *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 662 (1994) (quoting *United States v. O'Brien*, 391 U.S. 367, 377 (1968)).

32. See *Thomas v. Chicago Park Dist.*, 534 U.S. 316 (2002) (No. 00-1249).

33. *Rice v. Paladin Enterprises*, 128 F.3d 233 (4th Cir. 1997), *cert. denied* 523 U.S. 1074 (1998).

34. *Thomas v. Chicago Park District*, 534 U.S. 316 (2002).

APPENDIX

CASES CONCERNING OR RELATING TO LIBRARIES, MEETING ROOMS, AND EXHIBIT SPACES

2012–2015

Liberty Counsel v. Wake County (North Carolina)

[*Liberty Counsel v. City of Lawrence \(Mass\)*](#)

Liberty Counsel v. Seaside Public Library (Oregon)

These are part of a series of lawsuits that have been filed and settled with the result that the libraries lifted restrictions on the religious use of meeting rooms. For more cases, see <https://www.lc.org/search-results?query=libraries>.

2009

Faith Center Church Evangelistic Ministries v. Glover, U.S. Dist. LEXIS 52071 (N.D. Cal. 2009) (unpublished). Room booked for “Prayer, Praise Worship.” The library said patron was responsible for distinguishing worship services from nonworship speech. The patron said that was not possible as anything she does in accordance with God is an act of worship. The Court ruled that the library cannot decide, as that would constitute excessive entanglement between church and state. Libraries must allow religious services unless they can come up with another way to determine what a religious service is.

2008

Citizens for Community Values, Inc. v. Upper Arlington Public Library Bd. of Trustees, 2008 U.S. Dist. LEXIS 85439, (S.D. Ohio 2008). Cannot have excessive entanglement by library determining what is a religious service. The library cannot pick and choose what parts of a program to allow.

2007

Faith Center Church Evangelistic Ministries v. Glover, 462 F.3d 1194 (9th Cir. 2006), amended [no substantive change to original opinion] and rehearing en banc denied [dissenting opinion filed] by 480 F.3d 891 (9th Cir. 2007), cert. denied 128 S. Ct. 143 (U.S. Oct. 1, 2007). See also 2009 Faith Center opinion.

2006

Redner v. Hillsborough County, Florida, 442 F. Supp. 2d 1233 - Dist. Court, MD Florida 2006

2000

Wisconsin. Federal District Court Decision:

Restricted-Access Library Policy Struck Down.

Pfeifer v. City of West Allis, 91 F. Supp. 2d 1253 (E.D. Wis. 2000). Decision: April 10, 2000.

A federal court ruled that the West Allis (Wis.) Public Library violated a man's First Amendment rights when it refused him permission to use the library's Constitution Room for a presentation about creationism. The library policy excluded the following uses of the room:

1. Meetings that are politically partisan.
2. Religious services or instructions.
3. Commercial sales or presentations promoting specific companies or products.
4. Regular meetings of clubs, groups or organizations etc.— not to include educational or cultural activities open to the general public that are sponsored by the clubs, groups, organizations, etc.³⁵

The court found the library's meeting room to be a designated public forum, subject to the same standards as a traditional public forum. "Concern by forum administrators about potentially controversial applicants is surely understandable, but it should not be an incentive to restrict communicative activity." *Pfeifer*, 91 F. Supp. 2d at 1267.

1999

Florida. Settlement Agreement:

Restricted-Access Library Policy Changed.

Settlement Agreement: October 6, 1999.

The Tampa-Hillsborough County (Fla.) Public Library System settled a lawsuit filed October 3 by Concerned Women for America (CWA). The CWA wanted to use a library meeting room to discuss and pray about abortion. The library's policy prohibited religious, partisan political, for-profit, and discriminatory groups from using library meeting rooms. Under the settlement, the library agreed to allow religious groups to use the library, but kept the ban on partisan political, for-profit, and discriminatory groups.³⁶

1989

Mississippi. Federal Fifth Circuit Decision:

Restricted-Access Library Policy Struck Down.

Concerned Women for America v. Lafayette County, 883 F.2d 32; 1898 U.S. App. LEXIS 13864 (5th Cir. 1989). Decision: September 14, 1989.

A federal appellate court struck down the Lafayette County (Miss.), Oxford, Library's policy that did not allow the Concerned Women for America (CWA) Prayer Chapter the use of the library auditorium. The library policy, which required groups to get permission from the head librarian, was found unconstitutional:

The Auditorium of the Oxford branch of the First Regional Library is open for use of groups or organizations of a civic, cultural or educational character, but not for social gatherings,

entertaining, dramatic productions, money-raising, or commercial purposes. It is also not available for meetings for social, political, partisan or religious purposes, or when in the judgment of the Director or Branch Librarian any disorder is likely to occur. (*Concerned Women for America*, 883 F.2d at 33; 1898 U.S. App. LEXIS 13864.)

The court found that by allowing diverse groups to use its auditorium, there was a substantial likelihood that the library had created a public forum.

Concerned Women for America, 883 F.2d at 34; 1898 U.S. App. LEXIS 13864.

The Establishment Clause was not implicated, in the absence of evidence that religious groups would dominate the use of the library's auditorium, causing the advancement of religion to become the forum's "primary effect." *Concerned Women for America*, 883 F.2d at 35; 1898 U.S. App. LEXIS 13864 (5th Cir., Sept. 14, 1989), citing *Widmar v. Vincent*, 454 U.S. 263, 275, 102 S. Ct. 269, 277, 70 L. Ed. 2d 440 (1981).

35. *Pfeifer v. City of West Allis*, 91 F. Supp. 2d 1253, 1256 (E.D. Wis. 2000).

36. Three days after the lawsuit was filed, the two sides reached a settlement agreement, supervised by U.S. District Judge William J. Castagna. See Bruce Vielmetti, *Religious Groups Gain Use of Library*, St. Petersburg Times, Oct. 6, 1989. The library's current policy can be found at http://www.thpl.org/thpl/webmaster/forms/mtgrm_policy.html (visited June 30, 2001).