



7/6/2021

Remarks from Neil Bruntrager, City Attorney of Webster Groves on the 2021 Community Days Parade:

The Webster Groves Community Days Parade is held annually on the Fourth of July. It celebrates the birth of the nation and the unique qualities of Webster Groves. The parade is open to anyone who submits an application and attends the safety training. Two years ago, the City reviewed the policies and applications for the parade to ensure they were content-neutral requirements and to ensure that they were reasonably necessary for the organization of the parade itself. Webster Groves does not and may not exclude anyone on the basis of the identity of the group or the principals for which they stand or the content of the message that they promote except under very limited circumstances. The Webster Groves Parade is a publicly funded parade and faces the limitations that any government-sponsored activity would regarding limiting the message of the participants. As a consequence, the City of Webster Groves may not discriminate against those who seek to participate or on the basis of the message that participants seek to express. To do so would be in violation of the First Amendment. "Congress shall make no law abridging the freedom of speech". When the Supreme Court reviews speech, they break it down into two component parts, unprotected speech, and protected speech. Unprotected speech falls into three categories:

1. obscenity;
2. child pornography; and
3. fighting words and true threats.

If a message falls into either of these three categories it can be the subject of restriction by the governmental entity. The Supreme Court has held that fighting words are "those personally abusive epithets which, would address to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke a violent reaction. A true threat is defined as statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or groups. These essential part of both of those concerns is the fact that the words or the threats must be imminent, meaning that they pose an immediate threat or concern. That is why yelling "fire" in a crowded theatre would be considered a true threat because it has an immediate promise of harm or injury. In listening to the statements that were filed by the citizens of Webster Groves, almost to a person, what they ask for or what the Supreme Court describes as "content-based restrictions". Quoting Supreme Court Case, *Virginia vs. Black*, "the hallmark of the protection of free speech is to allow 'free trade and ideas' – even ideas that the overwhelming majority of people might find distasteful or discomforting". Further, the First Amendment ordinarily denies a state "the power to prohibit dissemination of social, economic, and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence. Again, that cites the case of *Virginia vs. Black* and is exactly on point to the concerns that have been voiced here this evening.

I'm quoting from the case of *Rosenberger vs. Rector and Visitors of the University of Virginia*, a 1995 Supreme Court Case: "discrimination against speech because of its message is presumed to be unconstitutional... when the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction".

The parade includes many different voices and perspectives on politics, local issues, and national concerns. These different points of view are woven into the purpose of such a parade and reflect the diversity of the community. Freedom of expression applies to everyone and if a particular point of view or statement is disagreeable it is simply part of the cost of ensuring that the right to express a particular point of view or statement to which you do agree. Ironically, one of the reasons that we march or allow anyone to march in the parade is to ensure that even disagreeable expressions will have the right to be heard. That is our legal obligation. It should be noted, as I stated earlier, that because we are a publicly funded parade, we are subject to the restrictions created by the First Amendment. A privately-run parade like the Macy's Day Parade has no such limitations. Similarly, when we read about Facebook prohibiting certain types of statements, keep in mind that these are private institutions and are not limited by the First Amendment. The First Amendment speaks to governmental authority. The City of Webster Groves is bound to uphold the freedom of speech.