

# The Bulletin

## Even in politics, free speech has limits

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March 19, 2016

WASHINGTON — Donald Trump can insult hecklers at his rallies, tell 'em to “go home to mommy” and even suggest they should have been roughed up.

But the increasingly heated, intense protests and insults at his events raise important questions about free speech, a cornerstone of American democracy: How far can a candidate or his opponents go?

After all, the political process is one where everyone has a right to be heard. Still, there are restrictions.

As long as a candidate's events are in a private place, or a public venue the candidate has reserved and paid for, no one can legally interrupt the event. Doing so would be akin to disrupting a wedding or screaming in the middle of a movie. It's Trump's show, and he can holler “get him out of here” all he wants.

“Technically there aren't free speech rights that apply,” said Rodney Smolla, a First Amendment expert and dean of the Delaware Law School.

But.

Speakers also are subject to some limits. They can't specifically urge violent or criminal behavior. Once outside the venue, in a public place, protesters have considerable rights — though if they get too disruptive, their behavior can become criminal.

“Walk outside and the First Amendment is in full force,” said Lee Rowland, senior staff attorney for the American Civil Liberties Union's Speech, Privacy and Technology Project.

The Trump campaign is clear that it knows where the lines are and it adheres to them.

“People have the right to protest outside. There are designated peaceful protest areas at our large events,” spokeswoman Hope Hicks said in an emailed response to questions. Trump has repeatedly said he does not condone violence, though he routinely mocks protesters and has said he'd like to punch one in the face.

Protesters have disrupted plenty of rallies during this election season. Last summer, Black Lives Matter activists interrupted the rallies or speeches of Democratic candidates Hillary Clinton, Bernie Sanders and Martin O'Malley. Such disruptions have become almost routine at recent Trump events.

At a March 9 Trump rally in Fayetteville, North Carolina, police arrested John McGraw, 78, for allegedly punching a protester. A video shows a man being escorted out by law enforcement officials as the audience jeers. The man raises his middle finger to the audience, and suddenly an older man in a cowboy hat punches him in the face. Five deputies were disciplined for not properly controlling the situation.

Two days later, hecklers interrupted Trump's St. Louis speech at the downtown Peabody Opera House six times, at one point holding up the rally for nearly 10 minutes.

During the St. Louis disruptions, Trump insulted the protesters, calling them "young, spoiled kids," urging them to "go home to mommy" or "get a job." At one point he smiled and told the audience, "Isn't this more exciting than listening to a long, boring speech? You can hear that from the other candidates. They don't say anything, anyway."

Tensions were building. That evening, the billionaire businessman postponed a Chicago rally because of concerns about safety.

Trump has every right to be heard, to mock hecklers and to offer sarcastic asides at his events — and the hecklers have fewer rights inside the room. Eugene Volokh, who teaches free speech law at UCLA, cites state laws such as one in California that says, "Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character" is guilty of a misdemeanor.

There is a line that speakers at private events can't cross, but it's hard to do. If a candidate or speaker were to call for some sort of immediate, violent action that could not be justified as self-defense, he or she would probably risk legal jeopardy.

Trump has not gone that far. In November, a man interrupted a Trump rally by shouting, "Black lives matter." A fight erupted, and Trump demanded that the man be removed. The next day, Trump told Fox News, "Maybe he should have been roughed up, because it was absolutely disgusting what he was doing."

Last month, after a protester interrupted him in Las Vegas, Trump told the audience, "I'd like to punch him in the face."

In Fayetteville this month, the Cumberland County Sheriff's Office considered whether the actions of Trump or his campaign were inciting a riot, and concluded they were not.

But is Trump coming close to the line? "I think you'd have riots," Trump told CNN on Wednesday, if he were close to winning the nomination at the Republican convention in July but was denied.

He was careful not to condone or specifically urge such behavior. "I wouldn't lead it," he said, "but I think bad things would happen."

That's not a call to arms. But "if he says at a certain point he wants to create problems, riots might be attributable to him," said Ilya Shapiro, senior fellow in constitutional studies at Washington's Cato Institute, a libertarian research group.

Trump's campaign would have a tougher task controlling hecklers outside private venues. The Supreme Court has a long history of upholding free speech challenges in public places. In 2011, it ruled 8-1 that fundamentalist church members could hold anti-gay protests near military funerals as long as they followed applicable state and local regulations.

Its rulings have been consistent: Protesters may gather, shout, hold signs and do what they please as long as it does not involve criminal activity, obstruct traffic or otherwise disturb the peace.

At the Trump St. Louis rally, police arrested 32 people, almost all of them inside the hall. All but one charge was for disturbing the peace. The exception was an arrest on an assault charge outside the venue.

Inside the hall, Trump was in control. As Smolla put it, "You have no right to keep speaking if told to be quiet."