



TEXAS MUNICIPAL LAW BULLETIN™

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Disruptive Speech Prohibitions

With regards to the First Amendment, lawmakers can struggle to provide safe public forums without hindering citizens' guaranteed free speech. Recently, the State of Maine's attempt to balance these interests was challenged in federal court. After a thorough review of applicable First Amendment law, including the recent U.S. Supreme Court case Reed v. Town of Gilbert, the First Circuit Court of Appeals concluded that the law was a constitutional time, place and manner restriction. While Texas sits in the Fifth Circuit and this ruling is not binding, it is instructive as to how courts are interpreting the boundaries of Reed and illustrates the factors considered when determining if a law is content-neutral.

The provision at issue bars a person from making noise that "can be heard within a building" when such noise is made intentionally, following an order from law enforcement to cease making it, and with the additional "intent either:

- (1) [t]o jeopardize the health of persons receiving health services within the building; or
- (2) [t]o interfere with the safe and effective delivery of those services within the building."

An anti-abortion protestor challenged this law

claiming its "disruptive-intent" requirement is an unconstitutional content-based restriction on his free speech because, unlike other noise makers, the content of an abortion protestor's speech will automatically establish his disruptive intent. The Court disagreed and concluded that:

- The law clearly applies to any noise made with intent to disrupt, regardless of content.
- Reed does not prohibit content from being a factor in determining if the restriction applies, it just can't be the only factor.
- The "most probative evidence of disruptive intent is a person's decision to intentionally keep making loud noise after having been warned of its disruptive effect."
- Evidence of the harmful effects of loud, continuous noise on patients supports the law's purported purpose: to regulate this specific noise that is likely to be uniquely disruptive because of its manner.

Accordingly, it was held that the law's restriction on a particular subset of loud noise, loud noise that is intentionally disruptive, is a constitutional content-neutral restriction on the manner of expression.

BOJORQUEZ
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12325 Hymeadow Dr., Ste 2-100, Austin, Texas 78750 ★ Phone: 512-250-0411 ★ Fax: 512-250-0749 ★ TexasMunicipalLawyers.com

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