

Subject: A little research on Housing Authorities and political activity

Just a little information I've pulled quickly in anticipation of questions:

Neither state nor federal law prohibits housing authorities from banning political activities in common areas. According to the state Department of Housing (DOH) and federal Department of Housing and Urban Development (HUD), housing authorities may set their own rules concerning tenants' use of common areas, which may specify when tenants may use such areas and for what purposes. According to DOH and HUD, housing authorities' rules may prohibit political activities in common areas. However, these rules must comply with constitutional limits imposed by the First Amendment's freedom of expression provision. The constitutional limits imposed on housing authorities' regulation of common areas depend on the purpose for which a common area was created and its past use (i.e., the type of "forum" created).

I've quickly reviewed relevant case law and found that common areas in public housing projects have been deemed both a "nonpublic forum" and "limited public forum." When a common area is deemed a nonpublic forum, tenants do not have the right to organize activities in the space. When a common area is deemed a limited public forum, tenants may use the space for activities authorized by the housing authority. (See *Crowder v. Housing Authority*, 990 F.2d 586 (11th Cir. 1993) (auditorium is a limited public forum but a library a nonpublic forum); *Daily v. New York City Housing Authority*, 221 F.Supp.2d 390 (SDNY 2002) (community center is a limited public forum when not in use for regularly scheduled educational activities); *Concerned Residents of Taylor-Wythe v. New York City Housing Authority*, (unreported) 1996 WL 452432 (SDNY 1996) (community center is a nonpublic forum).

I did not find any cases in my brief review concerning the regulation of political activities in public housing common areas. However, even in cases where a common area is deemed a limited public forum, courts have held that housing authorities may regulate the "genre" of allowable activities (e.g., adult education classes, youth club meetings) as long as the authorities do not exclude groups because of the viewpoint they plan to express. For example, a housing authority could prohibit tenants from using an auditorium for family celebrations (e.g., weddings). However, it cannot allow Hindu wedding celebrations while prohibiting Jewish and Christian celebrations. Housing authorities that prohibit tenants from using common areas because of the tenants' viewpoints may be infringing on First Amendment freedom of expression rights.

To determine what type of restrictions a government entity can place on a person or group's use of government-owned property (e.g., a public housing project) to express ideas, courts use a legal doctrine called "forum analysis." Under this framework, the restrictions' permissibility under the First Amendment depends on a property's character and location. In "traditional public forums" (e.g., sidewalks, parks), most expressive activity must be allowed, subject to time, place, and manner restrictions. Conversely, in "nonpublic forums" (e.g., government offices, courthouses), a government entity can place significant restrictions on how people express themselves in order to preserve the property for its intended use, as long as the limits are not aimed at suppressing a particular viewpoint.

A third type of forum, a “limited public forum,” is created when a government entity intentionally opens a nonpublic forum to expressive activity “but limits the expressive activity to certain kinds of speakers or to the discussion of certain subjects” (Travis v. Owego-Apalachin School Dist., 927 F.2d 688, 692 (2nd Cir. 1991)). For example, a public college may allow student groups to use campus conference rooms for their meetings, or a housing authority may allow tenants to use a common area for adult education classes. Limited public fora may be created for narrow purposes, but restrictions on their use “must not discriminate against speech on the basis of viewpoint, and must be reasonable in light of the purpose served by the forum” (Id.).

Personally, I think the last category makes the most sense here. You can use that public space, but can't censor the types of speech (or participants) that can participate. In short, locking the doors was likely an issue.

As a final thought, The Hatch Act prohibits political activity by employees. Housing Authorities are usually not actually federal agencies, the Housing Authority is normally a not for profit corporation. However, Housing Authorities are required to follow federal law, bringing into question the Hatch Act. Furthermore, not for profit organizations cannot engage in political activity unless registered as a PAC. A violation can affect the status of the not for profit corporation under the IRS regulations.

So overall, bad idea to use that location and resources.

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Sent from my iPhone