

First Amendment Case Studies

#1

Christmas Conflict

The 5 First Amendment Freedoms

▶ Speech

- The First Amendment says that people have the right to speak freely without government interference.

▶ Press

- The First Amendment gives the press the right to publish news, information and opinions without government interference. This also means people have the right to publish their own newspapers, newsletters, magazines, etc.

▶ Religion

- The First Amendment prohibits government from establishing a religion and protects each person's right to practice (or not practice) any faith without government interference.

▶ Petition

- The First Amendment says that people have the right to appeal to government in favor of or against policies that affect them or that they feel strongly about. This freedom includes the right to gather signatures in support of a cause and to lobby legislative bodies for or against legislation.

▶ Assembly

- The First Amendment says that people have the right to gather in public to march, protest, demonstrate, carry signs and otherwise express their views in a nonviolent way. It also means people can join and associate with groups and organizations without interference.

Alan Aerts's holiday display (2003)

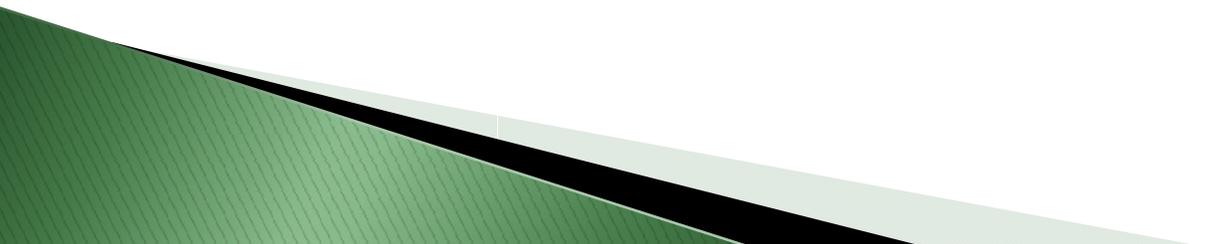


Alan Aerts's holiday display (2004)



1. *Is the Monte Sereno ordinance, passed in response to Alan Aerts's holiday display, a violation of the First Amendment?*

The ordinance prohibits any resident from keeping on his or her property a lighting display for more than three days.

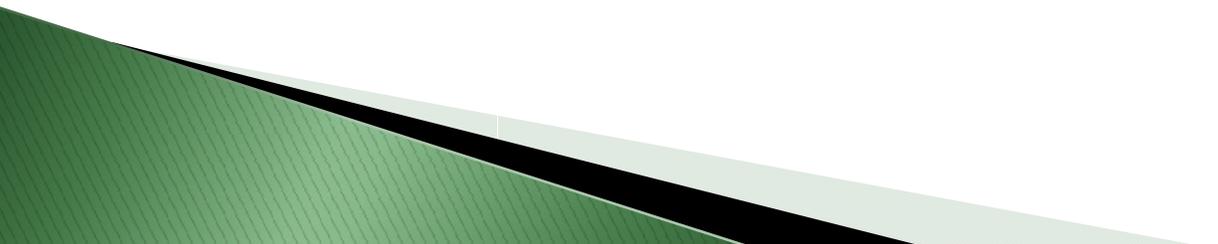


2. Assume that Aerts reprograms his Grinch statue to point a giant middle-finger at his complaining neighbors, the Nguyens, while a recording plays, in a Grinch-like voice, "You sons-of-bitches!"

Could / Should Monte Sereno arrest Aerts for violation of a law prohibiting "threatening or verbally harassing another person"?

3. Assume that the Monte Sereno City Council, in an apparent response to Aerts's placement of the 10-foot singing Grinch statue in his yard, passes a new ordinance. The new law prohibits homeowners from keeping in their yards any statue more than eight feet in height or any device programmed to play a song or read a message loud enough to be heard on the property of another person.

Is the new ordinance consistent with the First Amendment?



4. Assume that the council members supporting the decorative lighting ban are thrown out in a new election. The new city council votes to authorize residents to operate lighting displays on their property, but only during the period from Thanksgiving to January 15.

Miaow Ching, a practitioner of the Xanadu religion, is fined for violation of the new ordinance. Ching had installed in her front yard a 3,000-light display in May (in the shape of a giant twinkling test tube emitting colored smoke) in celebration of Holy Xanadu Day on May 22, the day Ching and other Xanaduians believe Xanadu received from God the sacred elixir that made him the all-seeing, all-knowing prophet that he became.

Does Ching have a First Amendment right to keep her display? Is the new ordinance constitutional?