

ANCHORAGE

ASSEMBLY

# First Amendment Speech and Debate



[WWW.MUNI.ORG/ASSEMBLY](http://WWW.MUNI.ORG/ASSEMBLY)

# The Text: The Constitution

Alaska

Article I, §5

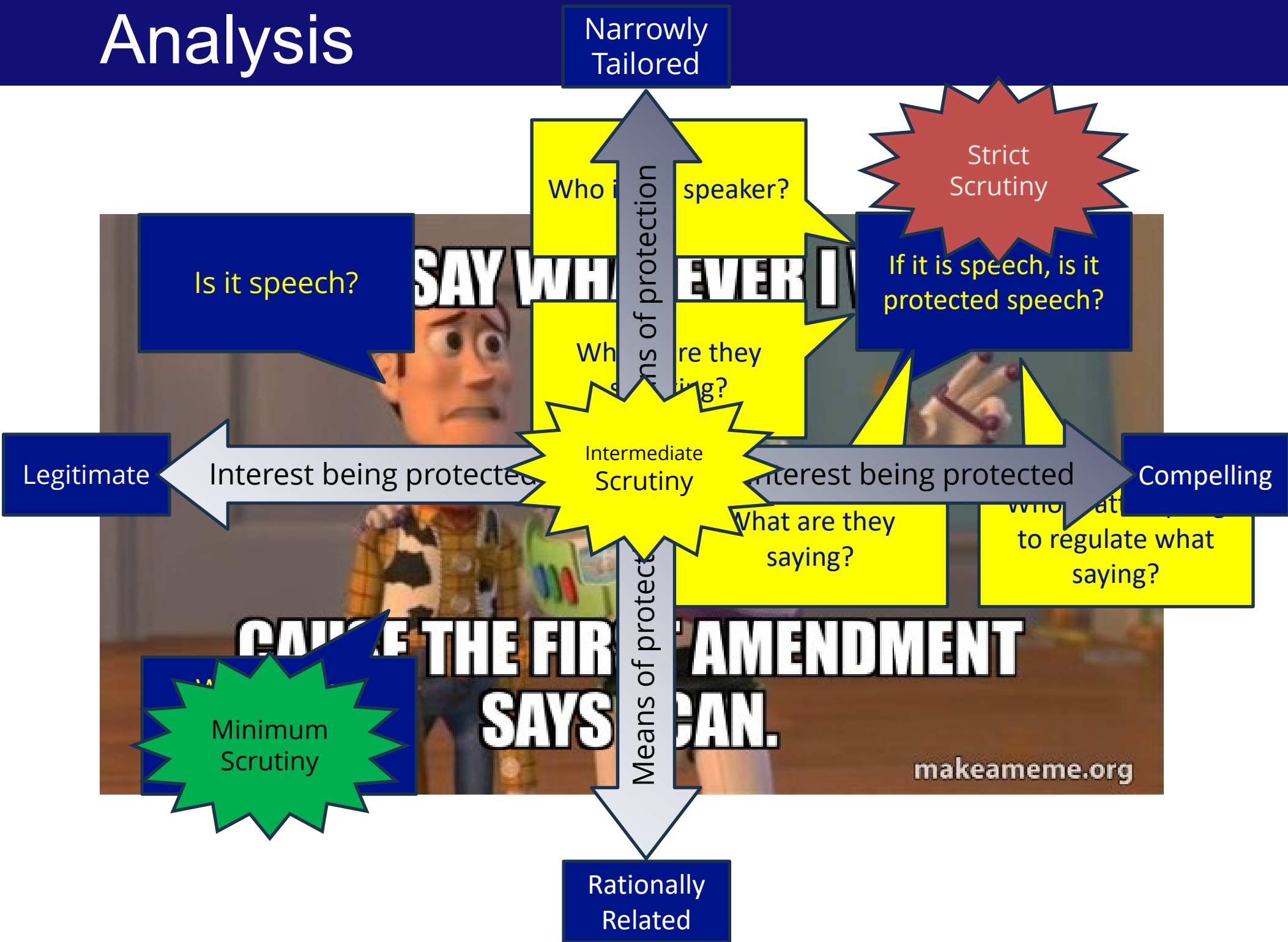
Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right

Federal

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

# Analysis



# Analysis: Is it speech?



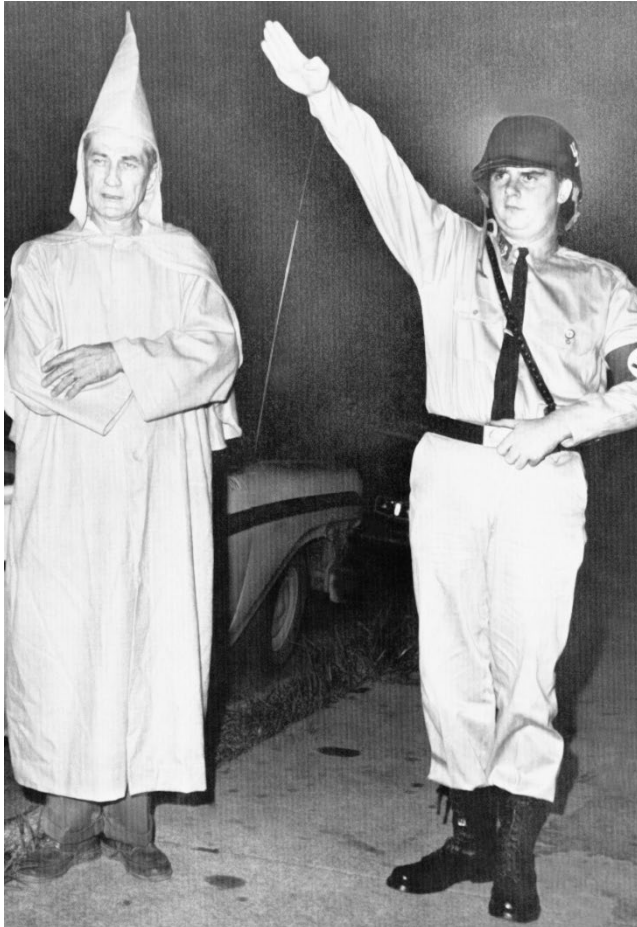
## Symbolic Speech

"In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether '[a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it.'"

*Texas v. Johnson*, 491 US 397 (1989)

An individual may use a portion of their allocated time to engage in silent protest, but while doing so must not prevent or delay other members of the public from providing testimony while the individual's silent protest continues. AMC 2.30.055

# Analysis: Is it protected speech?



## Unprotected Speech

"Defamation" of character or reputation.

*Gertz v. Robert Welch*, 418 US 323 (1974).

"True threats" of violence.

*Virginia v. Black*, 538 US 343 (2003).

Incitement to "imminent lawless action."

*Brandenburg v. Ohio*, 395 US 444 (1969).

Fighting words "likely to provoke the average person to retaliation"

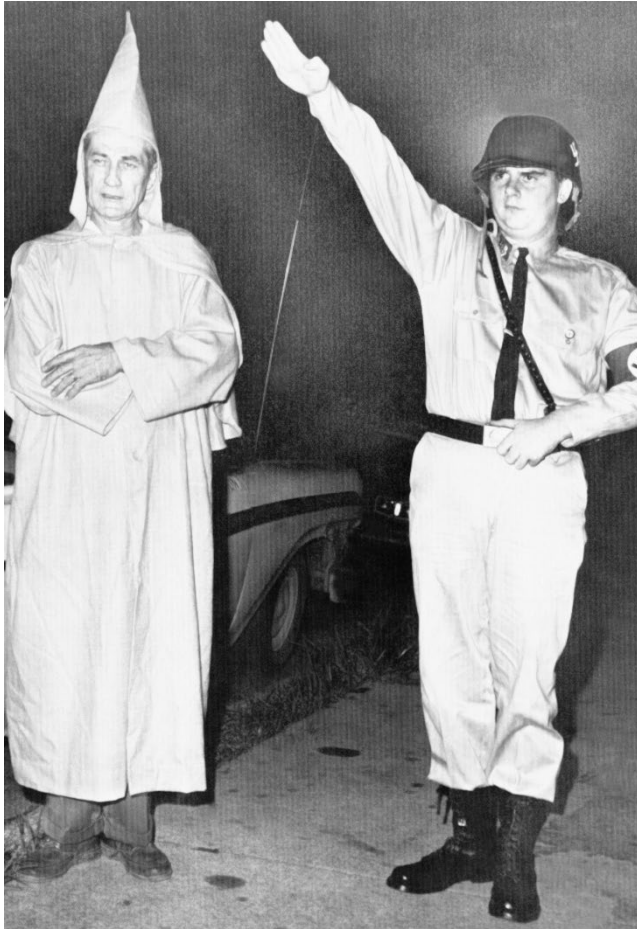
*Chaplinsky v. N.H.*, 315 U. S. 568, (1942).

Obscene, valueless material "appeal[ing] to the prurient interest"

*Miller v. California*, 413 US 15 (1973).



# Analysis: Is it protected speech?



## Protected Speech

First amendment protection for “core political speech” is “at its zenith.”

*Meyer v. Grant*, 486 US 414 (1988)

A primary “function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”

*Texas v. Johnson*, 491 US 397 (1989)

# Analysis: Who is the speaker?

Is this the same as this?



“The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech.”  
*Pleasant Grove City v. Summum*, 555 US 460 (2009).

# Analysis: Who is the speaker?

## Legislative Power

"A rule that colors the very conditions under which legislators engage in formal debate is indubitably part and parcel of the legislative process, and the acts of House officials ... in enforcing it are therefore fully protected against judicial interference by the doctrine of legislative immunity."

*Social Workers v. Harwood*, 69 F.3d 662





# Analysis: Who is the speaker?

## Legislative Power

"The Senators attempt to claim a personal First Amendment right to walk out, but Carrigan is clear that '[t]he legislative power thus committed is not personal to the legislator but belongs to the people; the legislator has no personal right to it.'"

*Linthicum v. Wagner*, 94 F.4th 887 (2024)



# Analysis: Where are they speaking?



## Limited Forum

"City Council meetings . . . where the public is afforded the opportunity to address the Council, are the focus of highly important individual and governmental interests. Citizens have an enormous first amendment interest in directing speech about public issues to those who govern their city. It is doubtless partly for this reason that such meetings, once opened, have been regarded as public forums, albeit limited ones."

*White v. Norwalk*, 900 F.2d 1421 (1990)

# Analysis: What are they saying?



## Limited Forum

"A council can regulate not only the time, place, and manner of speech in a limited public forum, but also the content of speech — as long as content-based regulations are viewpoint neutral and enforced that way."

*Norse v. Santa Cruz*, 629 F.3d 966 (2010)

# Analysis: What are they saying?



## Reasonable and Content-Neutral?

"a city's "Rules of Decorum" are not facially over-broad where they only permit a presiding officer to eject an attendee for actually disturbing or impeding a meeting... Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, *nunc pro tunc* disruption, or imaginary disruption. The City cannot define disruption so as to include non-disruption to invoke the aid of Norwalk."

*Norse v. Santa Cruz*, 629 F.3d 966 (2010)



# Takeaways: Rules of thumb

## Legislature

- Regulated by the AMC and RRO by incorporation
- Cannot invoke 1<sup>st</sup> A protection but rules cannot invidiously discriminate.
- Ultimately enforced by the Chair and the body.

## Public

- Subject to reasonable time place and manner restrictions.
- Can invoke 1<sup>st</sup> A protection as long as its germane, but cannot actually disrupt a legislative proceeding.
- Ultimately enforced by the Chair and the body.

ANCHORAGE ASSEMBLY

# Questions



[WWW.MUNI.ORG/ASSEMBLY](http://WWW.MUNI.ORG/ASSEMBLY)