AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era—Democratic Rights/Free Speech/Public Property, Subsidies, Employees, and Schools

**Clark v. Community for Creative Non-Violence, 468 U.S. 288** (1984)

*The Community for Creative Non-Violence (CCNV) is a Washington, D.C.-based advocacy group for social justice, with a particular focus on the homeless. In 1982, CCNV applied for a permit from the National Park Service to hold a winter demonstration in Lafayette Park and the Mall across from the White House. The permit allowed the erection of two symbolic tent cities that could accommodate as many as 150 people. The tent cities, dubbed “Reaganville,” were to serve both as symbols and as sites of protest. CCNV hoped to encourage the homeless to participate in the demonstration, but they had previously found that the homeless were unlikely to participate unless they were could sleep in the tents. Standing Park Service regulations prohibited “camping” in Lafayette Park or on the Mall.*

*CCNV filed suit in federal district court seeking an injunction against the Park Service preventing the enforcement of the no-camping regulations, arguing that the regulation as applied to them violated the First Amendment. They lost in the district court, but won in a deeply divided Court of Appeals. William P. Clark, as Secretary of the Interior overseeing the Park Service, appealed to the U.S. Supreme Court. The Court reversed the Court of Appeals and upheld the regulation in a 7-2 decision. The Court held that even if sleeping in the tents is an expressive activity, the ban on camping in the park is a legitimate time, place, and manner regulation structuring speech on government property. Should sleeping in the park be given any constitutional protection? If it should, does the majority opinion appropriately balance government and individual interests? Is content neutrality a sufficient guide to evaluating government regulations that limit speech?*

JUSTICE WHITE delivered the opinion of the Court.

. . . .

Under the regulations involved in this case, camping in National Parks is permitted only in campgrounds designated for that purpose. No such campgrounds have ever been designated in Lafayette Park or the Mall. Camping is defined as

“the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or . . . other structure . . . for sleeping or doing any digging or earth breaking or carrying on cooking activities.”

. . . . Demonstrations for the airing of views or grievances are permitted in the Memorial-core parks, but for the most part only by Park Service permits. Temporary structures may be erected for demonstration purposes but may not be used for camping.

. . . .

We need not differ with the view of the Court of Appeals that overnight sleeping in connection with the demonstration is expressive conduct protected to some extent by the First Amendment. . . . Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

. . . . That sleeping, like the symbolic tents themselves, may be expressive and part of the message delivered by the demonstration does not make the ban any less a limitation on the manner of demonstrating, for reasonable time, place, or manner regulations normally have the purpose and direct effect of limiting expression but are nevertheless valid. . . .

The requirement that the regulation be content-neutral is clearly satisfied. The courts below accepted that view, and it is not disputed here that the prohibition on camping, and on sleeping specifically, is content-neutral and is not being applied because of disagreement with the message presented. Neither was the regulation faulted, nor could it be, on the ground that without overnight sleeping the plight of the homeless could not be communicated in other ways. . . .

It is also apparent to us that the regulation narrowly focuses on the Government's substantial interest in maintaining the parks in the heart of our Capital in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy them by their presence. To permit camping – using these areas as living accommodations – would be totally inimical to these purposes. . . .

. . . . Perhaps these purposes would be more effectively and not so clumsily achieved by preventing tents and 24-hour vigils entirely in the core areas. But the Park Service's decision to permit nonsleeping demonstrations does not, in our view, impugn the camping prohibition as a valuable, but perhaps imperfect, protection to the parks. If the Government has a legitimate interest in ensuring that the National Parks are adequately protected, which we think it has, and if the parks would be more exposed to harm without the sleeping prohibition than with it, the ban is safe from invalidation under the First Amendment as a reasonable regulation of the manner in which a demonstration may be carried out.

. . . .

Accordingly, the judgment of the Court of Appeals is

*Reversed*.

CHIEF JUSTICE BURGER, concurring.

. . . .

Respondents' attempt at camping in the park is a form of “picketing”; it is conduct, not speech. Moreover, it is conduct that interferes with the rights of others to use Lafayette Park for the purposes for which it was created. Lafayette Park and others like it are for all the people, and their rights are not to be trespassed even by those who have some "statement" to make. Tents, fires, and sleepers, real or feigned, interfere with the rights of others to use our parks. Of course, the Constitution guarantees that people may make their “statements,” but Washington has countless places for the kind of "statement" these respondents sought to make.

It trivializes the First Amendment to seek to use it as a shield in the manner asserted here. . . .

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

. . . .

The proper starting point for analysis of this case is a recognition that the activity in which respondents seek to engage -- sleeping in a highly public place, outside, in the winter for the purpose of protesting homelessness -- is symbolic speech protected by the First Amendment. The majority assumes, without deciding, that the respondents' conduct is entitled to constitutional protection. The problem with this assumption is that the Court thereby avoids examining closely the reality of respondents' planned expression. The majority's approach denatures respondents' asserted right and thus makes all too easy identification of a Government interest sufficient to warrant its abridgment. A realistic appraisal of the competing interests at stake in this case requires a closer look at the nature of the expressive conduct at issue and the context in which that conduct would be displayed.

. . . .

Missing from the majority's description is any inkling that Lafayette Park and the Mall have served as the sites for some of the most rousing political demonstrations in the Nation's history. . . .

. . . .

Although sleep in the context of this case is symbolic speech protected by the First Amendment, it is nonetheless subject to reasonable time, place, and manner restrictions. I agree with the standard enunciated by the majority . . . . I conclude, however, that the regulations at issue in this case, as applied to respondents, fail to satisfy this standard.

. . . . The majority fails to offer any evidence indicating that the absence of an absolute ban on sleeping would present administrative problems to the Park Service that are substantially more difficult than those it ordinarily confronts. A mere apprehension of difficulties should not be enough to overcome the right to free expression. . . .

In short, there are no substantial Government interests advanced by the Government's regulations as applied to respondents. All that the Court's decision advances are the prerogatives of a bureaucracy that over the years has shown an implacable hostility toward citizens' exercise of First Amendment rights.

. . . . By narrowly limiting its concern to whether a given regulation creates a content-based distinction, the Court has seemingly overlooked the fact that content-neutral restrictions are also capable of unnecessarily restricting protected expressive activity. . . . The Court has transformed the ban against content distinctions from a floor that offers all persons at least equal liberty under the First Amendment into a ceiling that restricts persons to the protection of First Amendment equality -- but nothing more. . . .

. . . . The Court evidently assumes that the balance struck by officials is deserving of deference so long as it does not appear to be tainted by content discrimination. What the Court fails to recognize is that public officials have strong incentives to overregulate even in the absence of an intent to censor particular views. This incentive stems from the fact that of the two groups whose interests officials must accommodate -- on the one hand, the interests of the general public and, on the other, the interests of those who seek to use a particular forum for First Amendment activity -- the political power of the former is likely to be far greater than that of the latter. . . .