

First Amendment Issues in Ferguson, Missouri

8/26/2014

On August 9, a police officer shot and killed a teenager, Michael Brown, in Ferguson, Missouri. Since that day, citizens of Ferguson, and citizens from many other places throughout the country, [have gathered in the streets of the town to protest](#) against what they argue was an unjustified use of deadly force. Some protest [attendees have engaged in looting and other illegal activity](#) alongside the peaceful demonstrators. Law enforcement has [attempted to quell the illegal activity](#) at the protests by imposing a curfew on all protest activity; arresting those protesters, including journalists, who do not obey police orders to clear specific areas; attempting to forbid any video of police interaction with the crowd from being recorded; and using tear gas and rubber bullets to disperse crowds when law enforcement believes that the crowds have become too “violent.”

The clashes between law enforcement and protesting citizens in Ferguson [have inspired a number of articles claiming that the First Amendment rights of the protesters to free speech and peaceable assembly are being violated](#). As recently as this past Supreme Court term, when the Court struck down a statute prohibiting speech within a certain distance of abortion clinic entrances, the Justices reminded the country that [public streets and sidewalks have been held open for public discussion since “time immemorial.”](#) Given allegations that the First Amendment rights of protesters in Ferguson are being violated, the recent Supreme Court case, and these articles alleging the suppression of constitutional rights, an important question may be raised as to what remedy the protesters might find under current federal law.

Federal statute, [42 U.S.C. § 1983](#), provides American citizens with the right to sue persons who, acting under the color of law, violate their civil rights, including the right to freedom of speech and assembly. Reasonable monetary redress is available, as are remedies in equity, which might include an injunction against the state official to prevent future similar violations. On duty police officers are acting under the color of law, and their actions in violation of the constitutional rights of the citizens they police are subject to civil suit under Section 1983. In order to bring a claim under Section 1983 for suppression of First Amendment rights, the citizens suing must have been speaking on a matter of public concern at the time their speech was suppressed. It seems likely that protesting an allegedly unjustified use of deadly force by the police would be considered to be speech on a matter of public concern. The question the reviewing court would need to answer, therefore, likely would be whether the police actually did deprive the protesters of their First Amendment rights. Law enforcement may take reasonable action to control a crowd in the name of preserving the safety of the public, and would presumably argue that that is the basis for its actions in Ferguson. Furthermore, law enforcement officers sued in their individual capacity may be able to assert [qualified immunity](#) from suit under Section 1983 if they can show that they reasonably believed in the constitutionality of their conduct. It would be up to a court reviewing the facts to determine whether the rights of the protesters had been violated, and whether the officers charged may be immune from suit.

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