

PROTECTING UNDERAGE YOUTH BY RESTRICTING ALCOHOL INDUSTRY SPONSORSHIP AND SIGNAGE AT COMMUNITY EVENTS: FIRST AMENDMENT CONSIDERATIONS

TYPE OF COMMUNITY EVENT	TYPE OF GOVERNMENTAL ACTION	TYPE OF CONSTITUTIONAL TEST	ELEMENTS OF CONSTITUTIONAL TEST	COMMENTS
<p>Event is government-sponsored or held on government-owned, leased, or controlled property.</p> <p>Government controls revenues from sponsorship.</p>	<p>Legislation or other governmental action that restricts alcohol sponsorship of these events is made in government’s role as a proprietor or market participant.</p>	<p>Legislation subject to lower “reasonableness” test, provided restrictions apply to sponsorship on non-public forums.</p> <p>Legislation usually upheld.</p>	<p>Is the legislation “unreasonable” (in other words, “arbitrary, capricious, or invidious”)?</p>	<p>Event infrastructure (stages, fencing, etc.) is the “nonpublic” forum and distinct from the traditionally “public forums” of public parks and public streets. (Courts impose “strict scrutiny” test, a standard even higher than <i>Central Hudson</i>, to restrictions of speech on public forums.)</p>
<p>Event is privately sponsored and privately operated but held on government property with some government participation (law enforcement security; parks department assistance)</p>	<p>Legislation or other governmental action that restricts alcohol sponsorship of these events is made in government’s role as a proprietor or market participant.</p>	<p>Legislation subject to lower “reasonableness” test, provided restrictions apply to sponsorship on non-public forums.</p> <p>Legislation usually upheld.</p>	<p>Is the legislation “unreasonable” (in other words, “arbitrary, capricious, or invidious”)?</p>	<p>Court may impose more difficult <i>Central Hudson</i> test if event is truly private and government participation is minimal. The extent of governmental control of the event will be critical to court decision.</p>
<p>Privately held event on private property. No governmental involvement.</p>	<p>Legislation or other governmental action that restricts alcohol sponsorship on private property is made in government’s role as regulator and constitutes a regulatory action.</p>	<p>Legislation subject to “intermediate scrutiny” test of <i>Central Hudson</i>.</p> <p>Careful crafting of legislation is critical to meeting the requirements of this test.</p>	<p>The government must establish that:</p> <ol style="list-style-type: none"> 1. The asserted governmental interest is substantial. 2. The legislation directly advances the asserted governmental interest. 3. The legislation is framed as narrowly as possible to serve the asserted interest. 	<p>Limit legislation to youth/family-oriented events. Include strong findings of fact describing a substantial governmental interest.</p> <p>Alternative strategy: enact “time, place and manner” restrictions, e.g. where signage may be placed at the event.</p> <p>Lower “reasonableness” test will apply.</p>