

# PUBLICATION

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## Serving Up Disruption: The New Age of Political Protests in Restaurants and Other Public Places

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**The past year has ushered in an unexpected challenge for the restaurant industry. Protests, both planned and spontaneous, against political figures in public places have caught business owners by surprise, giving rise to urgent questions about employee safety, First Amendment rights, and the implications of refusing to serve controversial guests. These high-profile incidents have not only served up disruption, but they have also encouraged conversation on how business owners can prepare for and respond to conflicts on their premises.**

The owner of the Red Hen restaurant in the small town of Lexington, Virginia no doubt expected a routine Friday night. She was poorly mistaken. Things took an unexpected turn when President Trump's press secretary, Sarah Huckabee Sanders, joined a party of seven who were already seated at the restaurant.

The chef immediately called the Red Hen's owner, who was at home at the time but drove to the restaurant to assess the situation. When the owner arrived, she met with the staff and ultimately decided, based on her employees' wishes, to ask Sanders to leave. The owner expressed concern about her staff, which included a number of employees who identify as LGBT, objecting to Sanders' defense of President Trump's ban on transgender persons from the military and of his policy of separating immigrant children from their parents and guardians.

Sanders agreed to leave the Red Hen peacefully, but the fallout from the incident was anything but peaceful. The incident erupted into a social media frenzy, with commenters fervently opposing and supporting the restaurant owner's actions. The frenzy bled into the restaurant's Yelp reviews, where protesters rated Red Hen poorly.

The protests went beyond social media. Trump supporters besieged the restaurant with calls to create false reservations. Customers had reservations canceled and could not get through to the restaurant on the phone. Hundreds of miles away, protesters egged another unaffiliated restaurant called the "Red Hen" in an apparent misdirected act of retaliation.

The Red Hen incident is only one of many. Other high-profile political protests in restaurants in recent months include the following:

- Senator Ted Cruz was greeted by a group of protesters as he and his wife attempted to eat at the Fiola restaurant in Washington, D.C. Cruz and his wife elected to leave as the protestors chanted at Cruz about the Justice Kavanaugh nomination.
- Senate Majority Leader Mitch McConnell and his wife, Secretary of Transportation Elaine Chao, were confronted by several persons while eating at a restaurant in Louisville, Kentucky. One woman approached McConnell's table and called him "traitor." Some restaurant patrons applauded in response while others disagreed. Another person confronted McConnell and yelled, "Why don't you get out of here? Why don't you leave the entire country?" That same person grabbed McConnell's to-

go box and dumped the food on the sidewalk. A few months earlier, protestors gathered and chanted outside another restaurant while McConnell was eating inside.

- Homeland Security Secretary Kirstjen Nielsen and her husband were heckled and harassed by protestors at a Mexican restaurant in Washington, D.C. Some of the customers in the restaurant applauded the protestors as Nielsen and her husband tried to continue their dinner with Secret Service agents providing protection.

So what should a restaurant or other business owner do about similar situations? Should it bar political representatives, particularly controversial ones, from being guests? Is that even legal? Can it remove disruptive customers and protestors? What about free speech rights? How should a restaurant or other business deal with staff who object to serving a political figure or controversial guest?

## Legal Considerations

State and local laws may differ so it will be necessary to speak in generalities on the legal issues here. One key generality is that private business owners need not worry about free speech rights pursuant to the First Amendment. The First Amendment does not apply to private businesses. It only prohibits government entities and actors from suppressing speech. Thus, a private restaurant, for instance, does not violate the First Amendment by requiring protestors to leave its property, even if it does so based on the content of the protestors' speech.

On the issue of requiring persons to leave a business, property owners generally have the right to determine which guests are welcome on their property. Guests who refuse to leave may violate trespass laws or even commit criminal offenses such as disrupting the peace. The police can enforce a number of criminal laws that protect property owners from unwelcome guests.

The right to exclude guests, however, has its limits. Most notably, Title II of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, or national origin in hotels, motels, restaurants, theaters, and other public accommodations engaged in interstate commerce (and courts broadly define "interstate commerce"). Title II, for instance, would prohibit a hotel from refusing to serve a guest because the guest hails from a foreign country or exercises a particular religion.

Situations involving controversial guests may also implicate an employee's legal rights. Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, gender, national origin, color, or religion with respect to "the terms and conditions" of employment. A server, for example, may be entitled to a religious accommodation not to work on certain sacred days or perform certain tasks that are contrary to the employee's sincerely held religious beliefs.

## Suggested Approaches for Business Owners

So how should a business owner deal with issues related to controversial guests? Here are some suggestions.

### 1. Resist Refusing to Serve Controversial Figures

Refusing to serve controversial guests raises a number of significant problems. Although laws generally do not prohibit a private business from refusing to serve a guest because of the guest's political views, such refusal could potentially morph into a violation of Title II of the Civil Rights Act. For instance, assume a restaurant refuses to serve a controversial African-American political figure or a controversial Muslim political figure. The lines could become blurred as to whether the business excluded the guest because of politics or because of the guest's race or religion, which the law prohibits.

Furthermore, refusing to serve a guest will undoubtedly offend a significant group of people and potentially result in disruptive counter-protests like the Red Hen experienced. Business owners should never expect consensus on which guests it should refuse. Indeed, in some recent incidents, guests who even disagreed with the controversial guest's political views objected to the rude treatment of the guest. Guests typically want other guests to be treated politely.

When asking a controversial guest to leave is the best option, problems may arise. Such situations may include those in which guests become violent or an otherwise dangerous or chaotic environment arises. Requiring a controversial guest to leave should be the exception.

## **2. Prepare Employees to Deal with a Controversial Guest Scenario**

Following a recent restaurant confrontation involving Senate Majority Leader McConnell, the restaurant lamented that the staff was "caught off guard as the incident escalated quickly." Don't be caught off guard. Businesses need to prepare staff so that they know how to respond to such incidents promptly. Such training may include (1) educating staff that controversial figures can be expected to visit the business from time to time; (2) making clear that the business expects all guests to be treated politely and served appropriately irrespective of the guests' beliefs or views; (3) providing instructions on how the staff should quickly and safely intervene to diffuse a confrontation; and (4) providing instructions on how the staff can contact authorities if an unsafe or disruptive situation exists. With respect to the latter, a business should always be prepared to contact the police or other authorities promptly if disruptions in any way present an unsafe situation.

## **3. Consider Accommodations for Objecting Employees**

An employee's request not to serve a guest could possibly implicate the employee's right to be free from unlawful discrimination in the workplace, such as if the refusal is related to a religious belief or concern over gender harassment or discrimination. To avoid such potential legal issues, employers should consider ways to accommodate an employee's request not to serve a guest. It may be, for instance, that the employer can assign a different employee to serve the guest or perhaps move the guest to a comparable area where the employee does not work. As a general rule, however, an employer need not implement an unreasonable accommodation or one that creates an undue hardship.

If you have questions about how to prepare for and respond to conflicts involving controversial guests at your premises, contact the author, [Rusty Gray](#), or any member of Baker Donelson's [Labor & Employment Group](#).

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