

# First Amendment Audits

*Coming To A County Near You!*

**What You Should Know About  
Constitutional Amendment Audits.**

**TCOLE # 2003**

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TEXAS ASSOCIATION of COUNTIES  
RISK MANAGEMENT POOL

# ***Disclaimer***

*This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.*



# 1st Amendment-U.S. Constitution

## Freedom of Religion, Speech & Assembly

**“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging 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.”**



# TRUE OR FALSE:

Citizens generally have a First Amendment right to record police actions and citizens from public spaces:

1. True
2. False

**True**



# First Amendment Right to Record

- The recording of public officials is considered “**protected speech**” under the 1st Amendment.
- The ability to observe and photograph or record agents of government, including police conducting business in a public place, is guarded by the Constitution.
- The Supreme Court has also held that the 1<sup>st</sup> Amendment protects a person’s right to circulate publicly available information they collect or record in any medium they choose.



# What are 1st Amendment Audits?

- **First Amendment audits** are a social movement conducted by individuals eager to test their free speech rights; especially their right to photograph and record from public spaces.
- Some audits link this practice with 2nd Amendment challenges and simultaneously test their right to carry firearms in public spaces. They especially look for improperly posted signs displaying PC 30.06 & PC 30.07 warnings at governmental buildings. **PC 46.03**
- Amendment Auditors and their supporters claim these acts help preserve their Constitutional rights by promoting transparency and open government.



# Who are 1st Amendment Auditors?

- **“Constitutional Auditors”** are self-appointed activists; they may act independently or in unison as citizen journalists.
- **First Amendment Auditors** desire to test the limits you place on their free speech right, mostly the right to occupy and film from public spaces.
- Their goal is to challenge your knowledge of how the law applies to their auditing actions and gauge your reaction to their presence or methods.

Auditors have often researched applicable laws that apply to their practices. They usually understand their rights and their limitations; they hope to challenge you on your knowledge and acceptance of their free speech practices.





# The Audit Process

- Auditors show up unannounced and photograph or film government buildings, offices, control points, and common or sensitive areas, including parking lots and vehicles.
- They often record public officials, governmental employees and citizens that are present and may demand personnel within their view be identified.
- Auditors commonly seek access to governmental records, request complaint or grievance forms, or ask for copies of select administrative policies.

*It is a mistake to think amendment auditors only target law enforcement; no public servant is off limits.*





# **1st Amendment Audit Experiences**

- Audit experiences may seem awkward; an auditor's behavior often appears suspicious or challenging.
- Auditors are intentionally vague. They often refuse to self-identify and most refuse to answer questions or explain their purpose or actions.
- Many auditors seem aggressive and seek verbal confrontation; they hope for inappropriate employee responses or negative/improper law enforcement intervention.



# 1st Amendment Audit Results

- Poorly handled audits often generate return visits or lead to additional auditors showing up.
- Recordings made during audits are commonly circulated on social media platforms, discussed on blogs, or aired on podcasts.

***Remember, you could become a social media sensation overnight by failing to understand their constitutional rights.***



# No Privacy Expectation When Viewed or Heard from a Public Place

- **Katz v. United States, 389 U.S. 347, 351 (1967)** (reasoning that “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection”);
- **Vega-Rodriguez v. P.R. Tel. Co., 110 F.3d 174, 181 (1st Cir. 1997)** “persons cannot reasonably maintain an expectation of privacy in that which they display openly”;
- **Turner v. Driver, No. 16-10312 (5th Cir. 2017)** “First Amendment principles, controlling authority, and persuasive precedent demonstrate that a First Amendment right to record the police does exist, subject only to reasonable time, place, and manner restrictions.”



# Public Space vs Restricted Space

- Public space is an indoor or outdoor area commonly open and accessible to the public by right or invitation.
- Public space includes all unrestricted areas in and around government buildings and offices, including lobbies, hallways, parking lots, sidewalks and other common areas.
- Areas with restricted entry or that exhibit controlled access (locked doors, physical barriers, limiting signage, etc.) would not be considered public space.
- Privacy can be created in restricted access areas in and around governmental buildings.



# “Stop Recording and Leave the Property”

- A person that is photographing or recording from a public space cannot selectively be told to stop recording or ordered to leave unless other citizens would also be told to leave the space at that time. Criminal Trespass warnings typically would not apply.

*Before requesting that someone stop recording or ordering them to leave an area ask yourself, “would a local citizen conducting routine county business normally be allowed to occupy that space”?*

- **“You’re free to go” also means “you’re free to stay”.**



## **FILL IN THE BLANK:**

**A person's 1<sup>st</sup> Amendment rights to Freedom of Speech, Freedom of Press, and Freedom of Assembly was determined by the Courts to be [\_\_\_\_\_].**

A. An Absolute Right

B. A Qualified Right

**B**





# First Amendment Limitations

- Free Speech is a qualified right, not an absolute right; it is governed by reasonable time, place, and manner restrictions.
- Individuals that are recording cannot:
  - Place themselves or others in danger
  - Trespass on private property
  - Enter a marked crime scene; or “materially interfere” with law enforcement activities



# Possible Interference Related Offenses

- **PC Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY.** (a) A person commits an offense if without legal privilege or authority, he intentionally, knowingly, or recklessly: (1) obstructs a highway, street, sidewalk, railway, waterway, **elevator, aisle, hallway, entrance, or exit** to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or ... *(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.*
- **Sec. 42.05. DISRUPTING MEETING OR PROCESSION.** (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance. (Class B Misd).



# Hindering Free Speech Can Equal a Constitutional Violation

- “[C]hilling a plaintiffs’ speech is a constitutional harm adequate to satisfy the injury-in-fact requirement.”
- “[I]t is not necessary that [a plaintiff] first expose himself to actual arrest or prosecution . . . a credible threat of enforcement is sufficient.” *Id.*

*Justice v. Hosemann, 771 F.3d 285, 291 (5th Cir. 2014)*



# HOW TO PRODUCE SUCCESSFUL OUTCOMES



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# Deflection and Disengagement

Auditors may try to intimidate you or engage you in debate or argument over their constitutional rights and your legal requirements.

- Educate yourself and train your co-workers. Gain confidence in your ability to interact with auditors by understanding their rights and their limitations.
- Remain professional and courteous
- Deflect any inflammatory comments
- Develop disengagement techniques (create privacy or separation, pass them off to a supervisor, etc.)
- Prepare programmed responses to common requests or demands made by Constitutional Auditors.



# Develop Programmed Responses

- “I know that you have a right to record in this area.”
- “Public access stops here”: \_\_\_\_\_ (*identify the boundaries*).
- “Complete this form to obtain a copy of public records” (*or our policy, etc.; explain the process*).
- “My name and title (or rank) is \_\_\_\_\_”; *or,*
- “Our office policy does not require me to identify to you and I prefer to withhold my identity”.
- “Would you like to speak to my supervisor?”





# Prepare for Audits in Advance

- Hold training or discussions about how audits should be handled in your office or workspace.
- Identify and mark any publicly restricted areas (*fencing or signage barring entry beyond a certain point, etc*).
- Ensure that workers' computer monitors/screens and documents containing sensitive information is shielded from view in public spaces.
- Adopt reasonable policies or procedures for employees to follow when engaging auditors:
  - *identity requirements;*
  - *rules for addressing policy and public records requests;*
  - *filing grievances and complaints, etc.*



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# TAC Law Enforcement Resources



**Situational Threat  
Assessment - Reasonable  
Response (STARR)**

**TCOLE Course Reporting  
and Curriculum Design**

**Ask About Our LE Programs:**



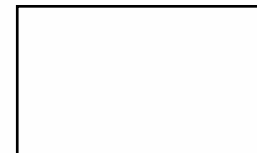
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# Resources

- International Association of Chiefs of Police
- Community Oriented Policing Services, U.S. Department of Justice
- United Counties Council of Illinois
- Jason Brokaw, of Giffin, Winning, Cohen & Bodewes, P.C. [www.griffinwinning.com](http://www.griffinwinning.com)
- <https://www.cnn.com/2015/04/22/us/california-marshall-smashed-phone/index.html>
- [The First Amendment Right to Record Images of Police in Public Places: The Unreasonable Slipperiness of Reasonableness & Possible Paths Forward \(tamupress.com\)](http://tamupress.com/2015/04/22/the-first-amendment-right-to-record-images-of-police-in-public-places-the-unreasonable-slipperiness-of-reasonableness-and-possible-paths-forward/)



# First Amendment Audit Examples

- Mchenry, Il: [www.youtube.com/watch?v=6ojXkJFUVPM](http://www.youtube.com/watch?v=6ojXkJFUVPM)
- Richmond, IL: [www.youtube.com/watch?v=3Fio7cleRsg](http://www.youtube.com/watch?v=3Fio7cleRsg)
- Nashville, TN: [www.youtube.com/watch?v=pJYudMI4IHs](http://www.youtube.com/watch?v=pJYudMI4IHs)
- Nashville public library: [www.youtube.com/watch?v=YvxNyr1K6DY](http://www.youtube.com/watch?v=YvxNyr1K6DY)
- Effingham, Il: [www.youtube.com/watch?v=\\_Xhv1EVbcus](http://www.youtube.com/watch?v=_Xhv1EVbcus)
- Joliet, Il : [www.youtube.com/watch?v=UwRgHocuFOc](http://www.youtube.com/watch?v=UwRgHocuFOc)
- Ozona, TX: [www.youtube.com/watch?v=pOh9aHwBoaU](http://www.youtube.com/watch?v=pOh9aHwBoaU)
- League City, TX: [www.youtube.com/watch?v=efSB\\_8r6jnl](http://www.youtube.com/watch?v=efSB_8r6jnl)
- Canton, TX: <https://link.edgepilot.com/s/d111d290/qUdbW0p88ECBuby-vRgHig?u=https://youtu.be/gxe9pFwRL1o>

