

## **SHOULD I GET ARRESTED?**

This is a complex issue and an individual decision, dependent on circumstances and a variety of factors. It is certainly a decision that can be dictated by conviction. However, speaking from a purely legal perspective, the answer to this question should always be an emphatic “NO.”

Aside from the difficulty and inconvenience one incurs as a result of being arrested, like bail expense, down time in a jail cell, etc., a criminal arrest can do great harm to your pursuit of religious liberty. The reason is jurisdiction. The best result you can obtain in a criminal court is a “not guilty” verdict, which affords you absolutely no relief for your desire to speak at a given place; while, on the other hand, a civil rights § 1983 lawsuit in federal court can secure “injunctive” relief, legal assurance that you will be free to exercise your Christian speech in the future. For this reason, it is much more preferable for a person deprived of religious speech to be in federal court, not criminal court.

Of course, this begs the question: Why not both, defend yourself in criminal court and pursue litigation in federal court? Not a bad idea, except for a legal doctrine known as “abstention.” The abstention doctrine requires a court to abstain from certain lawsuits. The abstention, if employed, shuts the door on would-be federal litigants.

Essentially, the abstention doctrine precludes one court from entertaining an issue that is presently being considered or has already been considered in another court. The notion seems logical, as it allows for efficiency in the system, avoids multiplicity of judgments, and precludes inconsistent results. Yet, when used in the context of an arrest of someone who is in the midst of carrying on constitutional expressive activity, this doctrine can act to preclude constitutional rights.

The abstention doctrine works like this. If you get arrested, a federal court will not consider any of the issues leading up to the arrest until the criminal matter has been concluded. Even if the criminal matter has been concluded, where the constitutional issues were considered and the criminal court held against you, the federal court may still abstain from entertaining the issues under the doctrine of abstention. Certain legal arguments can avoid this tragic result. For instance, if it can be shown that the unconstitutional behavior is likely to re-occur, you should still be allowed to pursue relief for action in the future. Notwithstanding, the very existence of a criminal arrest and criminal proceedings will undoubtedly cloud the issues, and, at a bare minimum, delay the process.

In a given circumstance, an individual may very well be willing to get arrested in support of a particular cause. And certainly, if your conviction causes you to do so, you should take such action. Please know beforehand, however, a criminal arrest may mean much more than one day in a jail cell. It may serve to foreclose your constitutional rights.

This document is not legal advice. If you need legal advice concerning your expressive activities, contact an attorney. You may contact the author of this document, Nate Kellum, attorney with *Alliance Defense Fund*, at (901) 684-5485 or by e-mail at [nkellum@telladf.org](mailto:nkellum@telladf.org) regarding possible violations of your constitutional rights.

If you are arrested, contact an attorney who practices criminal law for legal advice regarding any criminal charges against you. Nate Kellum does not practice criminal law.