

Open-Air Rights

The purpose of this document is to (1) help you understand your constitutional rights involving speech in the open-air and (2) enable you to share that knowledge with others who may attempt to impact those rights. The First Amendment to the United States Constitution requires: “Congress shall make no law... abridging the freedom of speech...,” and this freedom applies to the states through the Fourteenth Amendment. Upon this fundamental right, Christians are free to preach, carry signs, hold banners, hand out tracts, and witness in public places where other citizens are allowed to speak as long as such activities do not interfere with legitimate governmental interests. If you are restricted from engaging in these expressive activities, the following questions must be answered to determine your *open-air rights*.

What activity is being restricted?

Only speech, not action, is entitled to constitutional protection. Yet, protected speech comes in many forms, including preaching, public prayers, signs, banners, speaking, witnessing, and religious literature. If any of these types of activities are being limited by a public official, go to the next question.

Where is the speech being restricted?

Speech is entitled to protection in “public” places. This does not include privately-owned premises such as commercial businesses. Public areas clearly encompass streets, sidewalks and public parks, as well as walkways surrounding government-owned coliseums, stadiums, and buildings. As a rule of thumb, if other citizens are allowed to speak in an area owned by the government, you should be allowed to speak there as well. If your speech is being restricted in a public area, go to the next question.

Is the speech being restricted because it is religious or Christian?

Such a restriction would be unconstitutional on its face. Most government officials are savvy enough not to offer this as a basis even if actually true. Some of the more popular reasons used for restricting religious speech include: offending someone else, affecting public safety and order, or violating some law, policy or regulation. If you are provided with any of these purported reasons, go to the following questions.

Is the speech being restricted because it supposedly offends someone else?

Under the law, there is no such thing as a “heckler’s veto”. It is irrelevant whether the speech is considered by someone to be offensive or not. Indeed, if the speech is not deemed offensive by someone, constitutional protection would be unnecessary.

Is the public safety and order being used as a reason?

This is a valid purpose for restricting speech. The inquiry becomes, however, whether the speech actually affects public safety and order. Police often use this as an excuse when they simply do not like what you are doing. Request that the officer explain how your activities impact public safety and order.

Is some law, policy or regulation being used as a reason?

Certain “time, place or manner” restrictions may be appropriate depending on the circumstances. If this reason is given, the first thing to determine is whether the law, policy or regulation actually applies to the speech. For instance, soliciting and loitering laws should not apply. If the law does apply, the next question is whether it is constitutional. Legal advice is usually required for this analysis.

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