

# GFOA FIRST AMENDMENT AUDIT PRESENTATION

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## **ANNOUNCEMENTS/DISCLAIMER**

This presentation contains general information and guidance about the law. It is not intended to be, and does not constitute legal advice. Please consult with qualified counsel for your agency or department when formulating policy or addressing a specific factual situation involving First Amendment implications.



# WHAT IS A FIRST AMENDMENT AUDIT?

- First Amendment Auditing is the practice of exercising one's constitutional right to record video for the purpose of educating anyone who attempts to infringe upon that right and commending those that respect it.
- A successful First Amendment Audit is one in which the auditor is treated the same way as they would be treated without a recording device.
- First Amendment Auditors post these interaction videos online as a form of activism, and as a way to generate content, likes, subscribers, and to try and monetize their efforts.

what is a  
first amendment  
audit?



# WHY DO PEOPLE DO FIRST AMENDMENT AUDITS?



**Cop Can't Handle Being Told "NO!"**

LackLuster ✓

1.6M views • 11 months ago



**SECURITY THREATENS TO HAVE JOURNALIST ARRESTED...**

Long Island Audit ✓

1M views • 3 years ago



**You Couldn't Get A Better Lawsuit Than This! Corrupt ...**

Audit the Audit ✓

3.2M views • 7 months ago



**The Best 1A Audit On YouTube | The Chief And All Of His Cops ...**

We The People University ✓

1.8M views • 1 year ago



**"ARREST ME THEN!" | SGT. SAYS FILMING IN PUBLIC IS ...**

Long Island Audit ✓

4.3M views • 3 years ago



**POSTMASTER KAREN HAS THE FEELINGS POLICE LOCK ...**

Long Island Audit ✓

1.2M views • 3 years ago

# WHO COULD BE IMPACTED BY A FIRST AMENDMENT AUDIT?

- A First Amendment audit could happen at any government building or location, both inside and outside.
- Don't think it could happen to you?
  - [Westerville First Amendment Audit](#)
  - [Warren, RI First Amendment Audit](#)



# FIRST AMENDMENT - GENERAL

- “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the 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.”
- “In summary, though not unqualified, a citizen’s right to film government officials, including law enforcement officers, in the discharge of their duties in a public space is a basic, vital, and well established liberty safeguarded by the First Amendment.” - *Glik v. Cunniffe*.



# FIRST AMENDMENT - FORUM ANALYSIS

- **Traditional Public Forum** - An area that has been traditionally used for expressive activity
  - Streets, sidewalks, parks, etc.
- **Designated Public Forum** - intentionally opened for expressive activity
  - Municipal auditorium
- **Limited Public Forum** - intentionally opened for certain topic
  - Council meetings, courtrooms
- **Non-Public Forum** - Public spaces not open for speech or expression.
  - Employee only areas, private offices, “authorized personnel only”, bathrooms



# FIRST AMENDMENT - SPEECH LIMITATIONS

- **Traditional/Designated Public Forum**- receives the highest (strict) scrutiny
  - Reasonable time, place, and manner restrictions that are
    - (1) Content neutral
    - (2) narrowly tailored to serve a significant government interest.
- **Limited Public Forum**
  - Reasonable time, place and manner restrictions to allow for orderly, efficient, and productive meetings (i.e. time limits)
- **Non-Public Forum** - receives the least scrutiny
  - Viewpoint neutral
  - Reasonable in light of the purpose of the forum





# OHIO PUBLIC RECORDS LAWS - R.C. 149.43

- **Rights of Requesters**

- Any person may inspect or obtain copies of public records from a public office that keeps those records.
- Requests can be made in any manner: by phone, in-person, or in an email or letter.

- **Obligations of Public Office**

- Inspection requests must be complied with promptly.
- Requests for copies must be provided “within a reasonable period of time.”



# REMEDIES

- 42 U.S.C. 1983
  - When a government employee, acting under their official color or authority, deprives a citizen of any rights, privileges, or immunities of the US Constitution.
  - “Monell Claim” against an unconstitutional policy or custom.
- Public Records Violation
- If this right is violated the city could be liable to pay damages
  - [Leon Valley, Texas First Amendment Audit](#)



# HOW SHOULD WE DEAL WITH A FIRST AMENDMENT AUDIT?

- Remain calm.
- Let them record as long as they are not committing a crime or disrupting the workplace.
- Conduct business as usual, do not do anything more or less than you would do for any other interaction with the public.
- Be pleasant and polite, do not be rude or dismissive or try and intimidate.
- Do not confront, try to detain, or try and remove them from the premises.
- Do not attempt to take the auditor's recording device or initiate any physical contact with them.



# HOW SHOULD WE DEAL WITH A FIRST AMENDMENT AUDIT?

- If the First Amendment auditor attempts to access a non-public part of the building, we can politely ask them to stop and leave.
- If the First Amendment auditor becomes threatening, abusive, creates a safety or security risk, or disrupts ordinary business operations, law enforcement might need to be contacted.
- First Amendment audits do not always have to end up with a negative outcome.
- [Deerfield, Illinois First Amendment Audit](#)



# PROACTIVE STEPS TO TAKE TO PREPARE

- Conduct First Amendment Audit training to employees in the organization
- **\*\*IMPORTANT\*\*** Identify and then mark all non-public areas in buildings. The municipality or agency has the right to mark these areas as non-public and by doing so to impose reasonable regulations on the right of First Amendment auditors to access, photograph or record in them.



# AUTHORIZED PERSONNEL ONLY



**AUTHORIZED  
PERSONNEL  
ONLY**

# MEETING ROOM IN USE STAFF ONLY



# IMPORTANT THINGS TO NOTE

- This does not just apply to First Amendment audits but anytime a member of the public is recording us.
- First Amendment audits are not isolated to buildings but they can occur anywhere we are working including parking lots, vehicle impound areas, out in the field, etc. etc.
- We should always proceed with our public duties like it is possible that we are being recorded.
- First Amendment auditors are legally allowed to record us through a window or an open door if they are in a public area doing so.





# QUESTIONS?

