

First Amendment Audit Info for Maine Libraries

Most recent information and guidance issued for libraries:

[Auditing the First Amendment at Your Public Library](#) by Deborah Caldwell, The Office for Intellectual Freedom of the American Library Association. This article describes legal issues and explores the ways libraries can use Library Behavior Policies to address filming and photographing in the library. From the article:

“What does the law say?

The law distinguishes between a traditional public forum, or public square, and facilities opened to the public for a particular use or purpose, like a library or a courthouse. Facilities like libraries and courthouses are considered to be limited public forums or non-public forums for purposes of the First Amendment. In limited or non-public forums, the government agency administering the space is only obligated to allow those First Amendment activities that are consistent with the nature of the forum, even if the facility is open to the public.”

[OIF Examines Legal Issues for Library Social Media and First Amendment “Audits”](#) ALA Midwinter 2020

Session title: “Intellectual Freedom and the Law: Social Media, First Amendment Audits, and the Library as a Public Forum”. The session was Q& A and covered some social media questions (deleting Facebook comments) as well as First Amendment Audit guidance (crafting policies in accordance with state and local laws as well as with ALA Code of Ethics and Library Bill of Rights in mind.)

Background info on First amendment Audits:

First Amendment Audits at public libraries is a recent trend over the past few years that seems to ebb and flow in various regions nationally. This trend began out west but has been moving eastward. Here is background, information links and guidance to use in case Maine libraries find themselves facing a First Amendment Audit.

- Most First Amendment Audits primarily target law enforcement agencies, town officials, or other state and local agencies. Some audits have included public libraries.
- Auditors assume library employees and librarians are municipal officials. In Maine, many more libraries are nonprofit organizations who receive some funding from municipalities.
- Policies can be crafted to limit some First Amendment Audit activities

What is a First Amendment Audit?

From Wikipedia: First Amendment Audits is an American social movement, categorized by its practitioners, known as auditors, as activism and citizen journalism that tests constitutional rights; in particular, the right to photograph and video record in a public space. Auditors also believe that the movement promotes transparency and open government.

From First Amendment Auditing: *[Definition of First Amendment Auditing](#): The practice of exercising one's constitutional right to record video for the purpose of educating anyone who attempts to infringe that right and commending those who respect it.*

Website for First Amendment Auditors: <https://www.firstamendmentauditing.com/>

Most audits are posted on YouTube by the auditor. See samples:

- <https://www.youtube.com/watch?v=JO6GITcxYc8>
- <https://www.youtube.com/watch?v=EUFz-MGDJWY&feature=youtu.be>

These audits are a form of activism across the U.S. and are designed to test the rights of an individual to film in a public space. A citizen selects a public place (public library) and then films the entire encounter with staff and patrons alike. If the auditor/citizen is not confronted and there is no attempt to stop the filming, it is usually a non-event and the facility passes the "First Amendment test". If a staff attempts to stop a filming event, there may be a discussion and/or confrontation about the facility's policy and the First Amendment.

Libraries may establish policies regarding filming in their location but should obtain legal advice regarding such policies since governance, building ownership, etc. is so varied in Maine.