

## How to Handle a First Amendment Audit?

*NHMA Webinar*

**Thursday, March 30, 2023**

**Presented by:**

Keriann Roman, Esq.

HariNarayan (Huddy) Grandy, Esq.

# What are “First Amendment Audits”?\*\*

- A person or group exercising or claiming to exercise their First Amendment right to video record in public spaces such as libraries, police stations, town halls, and parking lots.
- Auditors post their recordings online to be viewed by others.
- Goal is to provoke public officials or employees into violating the 1st Amendment.
- “Successful” audits are where the person recording is treated the same as if they were not recording.

# What are “First Amendment Audits”?\*\* (cont.)

- “Failed” audits involve confrontations with public officials or employees where the auditor is told to stop recording, threatened with arrest, removed from the property, charged with trespass.
- Largely an American social and political movement
- Auditors get paid by fundraising to post videos of their audits
- Auditors compete with each other for views (and \$), resulting in more confrontational behavior to provoke a negative response and get more views

\*\*Taken from University of Georgia School of Law, First Amendment Clinic, <https://firstamendment.law.uga.edu/first-amendment-audits-respecting-the-right-to-record/>



## Press NH Now

@TheRealPressNHNow 94.9K subscribers 379 videos

Welcome to my channel where we hold everyone in our government accou... >

HOME

VIDEOS

SHORTS

LIVE

PLAYLISTS

COMMUNITY

CHANNELS

**ABOUT**



### Description

Welcome to my channel where we hold everyone in our government accountable under our first amendment rights to free Press. I want to thank everyone that watches this channel and shows there support for what I do to keep our government in line and also respect our rights as free citizens of this country.

Please Email if you know of any audits you would like me to do in the future that you think would be worth filming and for what cause in the NH and MA area.

I appreciate all of your support I put a link below for all of my subscribers to help with some of the cost getting around to do these audits, every little bit helps towards my adventures and possible legal fees around the state educating and conducting my activism and expressing my rights as a free citizen to the people.

Email LINK below)  
[Accountabilityforall15@yahoo.com](mailto:Accountabilityforall15@yahoo.com)

<https://www.paypal.me/pressnhnow>

[cash.app/\\$PRESSNHNOW](https://cash.app/$PRESSNHNOW)

Please LIKE, SHARE and SUBSCRIBE to my channel for the support of more videos

Thank you

### Stats

Joined Aug 13, 2019

27,539,630 views



# Press NH Now

@TheRealPressNHNow 94.9K subscribers 379 videos

Subscribe

Welcome to my channel where we hold everyone in our government accou... >

HOME VIDEOS SHORTS LIVE PLAYLISTS COMMUNITY CHANNELS ABOUT



Latest Popular



\*UPDATE\* CHARLESTOWN, NH RETALIATORY TRAFFIC STOP PRESS NH...

180K views • 2 weeks ago



SECURITY MANAGEMENT \*OWNED\* DISMISSED (NO SIGNS) 1ST AMENDMENT...

113K views • 3 weeks ago



BOARD MEMBER \*GETS OWNED\* RINDGE, NH TOWN HALL 1ST AMENDMENT AUDIT...

71K views • 1 month ago



\*ID REFUSAL\* NH STATE TROOPER \*GETS DISMISSED\* PRESS NH NOW 1ST...

80K views • 1 month ago



ROCHESTER, NH CITY HALL \*CALLS POLICE TWICE \* I DONT ANSWER QUESTIONS...



MANCHESTER, NH POLICE TYRANTS \*SQUEALING DIRECTIVES\* 1ST...



\*YOU'RE UNDER ARREST\* TURN AROUND NOW!! CLAREMONT, NH POLICE \*PRESS N...



ROOKIE OFFICER \*GETS OWNED\* RAINING CATS & DOGS IN CLAREMONT, NH PRESS...

→ video clip of an "audit" ←

<https://www.youtube.com/watch?v=LfRXimFp8xY>

# What does the First Amendment actually say?

- “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.”  
*1st Amendment, U.S. Constitution.*

- Applies to States and their political subdivisions through the 14th Amendment.

# What does the First Amendment actually say? (cont.)

- “[T]he videotaping of public officials is an exercise of First Amendment liberties.” *Glik v. Cunniffe*, 655 F.3d 78 (1st Cir. 2011).
- “The First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000).



# New Hampshire Constitution

- **[Art.] 22. [Free Speech; Liberty of the Press.]** Free speech and Liberty of the press are essential to the security of Freedom in a State: They ought, therefore, to be inviolably preserved.
- **[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.]** All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government.

# Where can the public video record at municipal offices/Town halls?

- Town Hall public parking areas
- Lobbies/waiting areas of Town Hall/town offices
- Interaction with government employee/official in public area of Town Hall/town offices

# Where can the public video record at municipal offices/Town halls? (cont.)

- Filming other “customers” in these areas
  - Filming allowed, and audio allowed if conversation in this “public” place could otherwise be heard by others – the “auditor” cannot use magnification to capture conversation
  - Customers have a right to privacy in the personal facts they must disclose to receive governmental services
  - If customer is uncomfortable being video recorded, take name and number and call them back, or bring them to a restricted area to complete their business

# Where can municipalities prohibit video recording?

- Employee offices, cubicles, or workspaces
- Non-public areas of Town Hall (where the public is not generally permitted un-escorted)
- Public restrooms
- Posted town properties where the public is generally not permitted
  - Note that these spaces must be posted

# What should you do to be ready for a First Amendment Audit?

- Clearly mark which areas of municipal buildings are not public areas
- Ensure that any confidential or non-public information is never visible from the public areas
  - Computer screens should be turned so as not to enable viewing from the public areas
  - Confidential papers, files should be covered or stored
- Train your officials and staff on what you've learned today

# What should you do to be ready for a First Amendment Audit? (cont.)

- Consider:
  - Designating at least 2 people who are more comfortable dealing with these auditors and being filmed so if an auditor shows up, the designated person(s) can be called to interact with them
  - Have commonly requested documents “at the ready” – this may limit the amount of time for an audit encounter. (Things like latest meeting minutes, board agendas, policies and procedures)

# What should you do during a First Amendment Audit?

- Be welcoming, friendly, and helpful. This will prevent escalation and will likely shorten the encounter.
- Remember: they (generally) have a right to record in these public areas, and can record you without your consent.
- They want a reaction. They will be condescending, rude, intimidating, and may even insult you. Your anger is their money-maker.

# What should you do during a First Amendment Audit? (cont.)

- Answer their questions calmly. If the encounter becomes lengthy and you need to get back to work, let them know and then resume your work.
  - They do not have a right to disrupt the operation of government, or prevent government employees from carrying out their duties.
- Frustrated and upset? Stay calm and polite, and call the designated response person, or take a break in a restricted area.



# How should you handle Right to Know requests during a First Amendment Audit?

- If the person refuses to write down their request, you write it out and date it with the person present and confirm what you've written
- If anything is immediately available for review at that time, provide it right then.
  - Meeting minutes in binders, board agendas
- If records cannot be produced immediately, provide an estimate for when the records will be available for inspection, and ask for the person's contact information to contact when the records are ready.
  - (You may need legal review, the records may be held by another office, may not be easily accessible, or there may be voluminous records that need to be compiled).

# How should you handle Right to Know requests during a First Amendment Audit? (cont.)

- Does the person want the records electronically?
  - If the records are already in electronic format, follow your procedure for providing electronic records. (You are not under an obligation to provide them in a specific electronic format.)
  - If the records are not in electronic format already, but it is reasonably practical to copy the records to electronic media, then copy them to electronic media and follow your procedure for providing electronic records.

## Questions?

## Thank You



**Keriann Roman**

*Attorney*

kroman@dwmlaw.com



**HariNarayan (Huddy) Grandy**

*Attorney*

hgrandy@dwmlaw.com