KNOW YOUR PETITIONING RIGHTS:
FREQUENTLY ASKED QUESTIONS[1]

Q. Do I have a constitutional right to petition?

A. Yes. Circulating a petition is "core political speech" deserving of the strongest possible protection under the First Amendment to the United States Constitution.[2]

Q. May I petition on public sidewalks?

A. Yes. The Supreme Court has said that public sidewalks are "traditional public forums" that are "held in trust for the use of the public" for the purposes of "communicating thoughts between citizens, and discussing public questions." [3] The government may not ban petitioning on sidewalks and it may not require petitioners to obtain a permit.[4] It may only establish "reasonable" rules such as rules against blocking pedestrian traffic or the entrance to buildings and parking lots and rules against setting up tables on sidewalks.

Please note that you only have a constitutional right to petition on sidewalks running next to public streets. Thus, while you have a right to petition on the sidewalk adjacent to Main Street, you do not necessarily have a right to petition on the sidewalk that runs

[1] These FAQ's are a summary of sometimes complex constitutional principles and should not be relied upon as legal advice. If you have a specific question or problem, you may wish to seek the advice of a lawyer.

[2] *Meyer v. Grant*, 486 U.S. 414, 421-22, 425 (1988) (striking down a ban on paying petition circulators and noting that "the circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as core political speech" in which "the importance of First Amendment protections is at its zenith."); *see also Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 186-87 (1999) (striking down statute requiring petition circulators to be registered voters and wear a badge bearing their name, and that petition organizers report all paid circulators' names, addresses, and amount paid to them).

[3] *Hague v. C.I.O.*, 307 U.S. 496, 515-16 (1939); *American-Arab Anti-Discrimination Committee v. Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005) (quoting *Hague*).

[4] As the Supreme Court stated in striking down a permit requirement for door-to-door canvassers, "It is offensive – not only to the values protected by the First Amendment, but to the very notion of a free society – that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so." *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 165-66 (2002).

perpendicular to Main Street towards the entrance to a building – even if it's the entrance to a public building like a post office.[5]

Q. May I petition in public parks?

A. Yes. Parks, like sidewalks, are traditional public forums where the right to petition is the strongest.[6] As a general matter, you should be able to walk throughout the park and petition in areas open to the public anytime during hours the park is open, and you do not need a permit.

As with sidewalks, the government can only impose "reasonable" restrictions, such as no petitioning without permission in parts of the park reserved by private groups for events like weddings. Recently, the ACLU successfully sued the Genesee County Parks when park officials adopted very broad restrictions banning petitioning without a permit and banning petitioning everywhere in a 135-acre park except a small "Freedom of Speech Area."[7]

Q. May I petition on government property other than sidewalks and parks?

A. It depends. Government-owned property such as schools, libraries and municipal buildings are not "traditional public forums" like sidewalks, parks and streets. However, the government may open these areas to certain free speech activities at certain times of the day as a matter of practice or policy.[8]

For example, a school may be off-limits to outside groups[9] during the school day, but leafleting and petitioning may be permitted on campus before and after school board meetings or other forums during the evenings. If government officials have allowed petitioning or other similar activity by some groups at certain places during certain times, they cannot legally bar you from petitioning at the same place and time even if they disagree with your message.[10] However, if certain buildings, such as police and fire

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[5] *United States v. Kokinda*, 497 U.S. 720 (1990) (holding that the sidewalk leading from the parking lot to the doorway of the post office was not a traditional public forum and that plaintiffs did not have a right to petition there).

[6] *Id.*; *see also Berger v. City of Seattle*¸ 569 F.3d 1029, 1035 (9th Cir. 2009) (en banc) (speaker's First Amendment protections "reach their zenith" in a public park.)

[7] *See* http://aclumich.org/issues/free-speech/2011-07/1588 and http://aclumich.org/issues/free-speech/2011-07/1591.

[8] These forums are considered "limited" or "designated public forums." *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).

[9] It should be noted that students have a right to circulate petitions among other students during the school day outside of classes unless the activity causes a "substantial and material disruption." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

[10] *Good News Club v. Milford Central School*, 533 U.S. 98, 108-09 (2001).

stations, have never been opened to public expression, government officials are not required to allow you to petition there – although you are always free to ask permission.

Q. Where may I petition during festivals or fairs open to the public?

A. You may seek petition signatures from people coming to or leaving the festival by standing on public sidewalks, on streets closed to traffic and in public parks outside the area reserved for the public festival.[11]

The question of whether you can petition within the inner perimeter of a festival or fair will depend on several factors. Initially, if the organizers allow for petitioning throughout the fair, then certainly you are free to petition where you wish. Also, several festivals and fairs have a designated area for non-profit organizations where you may petition – although some may require you to rent or reserve a booth in advance.

Even though a festival takes place on public streets or sidewalks or on public land, organizers may restrict you from petitioning in the area reserved for the fair under certain circumstances. For example, fair organizers may establish rules to prevent you from wandering the fairgrounds to seek signatures when 1) you have the option of petitioning from a booth or table in a designated area of the fair; 2) the fairgrounds are only open to those who pay an admission fee; 3) the rule is necessary to ensure the orderly movement of people in crowded areas; and 4) the organizers don't allow people to engage in other kinds of activity that would obstruct pedestrian traffic flow.[12] However, if a festival in a downtown area is open to regular pedestrian traffic and street vendors are permitted to set up tables on sidewalks within the perimeter of the fair, then you have a right to petition on the public sidewalks.[13]

Q. May I petition door-to-door in neighborhoods?

A. Yes. The Supreme Court has recognized that there is a rich tradition of canvassing door-to-door for political change in this country that is protected by the First Amendment.[14] The government cannot require you to register or seek a permit if you are not soliciting

[11] *Saieg v. City of Dearborn*, 641 F.3d 727, 738-40 (6th Cir. 2011) (pastor had First Amendment right to distribute flyers outside the inner perimeter of the Arab International Festival held in the streets of Dearborn).

[12] *Heffron v. Int'l Soc'y for Krishna Consciousness*, 452 U.S. 640 (1981) (Minnesota State Fair officials did not violate constitutional rights of members of religious society by barring them from soliciting donations and selling religious literature in places other than the booths designated for non-profit organizations).

[13] *Saieg*, 641 F.3d at 736-38 (fact that Dearborn allowed street vendors to set up booths on sidewalks belied the significance of its claimed interest in crowd control and keeping sidewalks clear).

[14] *Watchtower*, 536 U.S. at 162 (discussing the "historical importance of door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas").

for money,[15] and local rules governing door-to-door petitioning may not unreasonably interfere with your right to reach out to people in their homes.[16]

Door-to-door canvassers should stay clear of houses marked with "No Soliciting" signs.[17] Also, some private "gated communities" may not allow petitioners.

Q. May I petition on private property?

A. It depends. You have a constitutional right to petition on private property if you have permission from the owner. However, if the owner does not want you on her property and you refuse to leave, you run the risk of being charged with trespassing.[18] Apartment buildings are private property and therefore landlords have the ability, if they so choose, to set rules regarding petitioning on the premises.

Q. When I petition, may I speak to people or must I wait for them to come to me?

A. You have a constitutional right to approach strangers to talk about matters of public importance and ask them to sign your petition. The possibility that some people might disagree with you – or even might find your campaign offensive – would not justify a government ban on petitioners engaging pedestrians in conversation.[19] Although you are free to argue with someone about political matters, if someone tells you that she is not

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[15] *Id.* at 165-66.

[16] *See, e.g., ACORN v. City of Dearborn*, 696 F. Supp. 268 (E.D. Mich. 1988) (holding that Dearborn's ban on door-to-door canvassing between 7 p.m. and 9 p.m. is likely unconstitutional); *City of Watseka v. Illinois Public Action Council*, 795 F.2d 1545 (7th Cir. 1986), *aff'd* 479 U.S. 1048 (1987) (ban on canvassing before 9 p.m. unconstitutional).

[17] While it is unclear whether petitioning without a request for money constitutes "solicitation," there is a risk that a homeowner might call the police on you for trespassing if you knock on those doors.

[18] Trespassing is a misdemeanor under state law punishable by a fine of not more than $250 or not more than 30 days in jail. M.C.L. § 750.552. Most cities have similar ordinances. The state trespass law provides:

> (1) A person shall not do any of the following:
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> (a) Enter the lands or premises of another without lawful authority after having been forbidden so to do by the owner or occupant or the agent of the owner or occupant.
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> (b) Remain without lawful authority on the land or premises of another after being notified to depart by the owner or occupant or the agent of the owner or occupant.
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> (c) Enter or remain without lawful authority on fenced or posted farm property of another person without the consent of the owner or his or her lessee or agent. A request to leave the premises is not a necessary element for a violation of this subdivision. This subdivision does not apply to a person who is in the process of attempting, by the most direct route, to contact the owner or his or her lessee or agent to request consent.

M.C.L. § 750.552.

[19] "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself to be offensive or disagreeable." *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

interested in signing or talking, you should respect the person's wishes and should not follow or harass her.

Q. What should I do if a police officer tells me to stop petitioning and I think the officer is violating my rights?

A. Even if the police officer is wrong, we recommend that you stop petitioning because you are likely to be given a ticket if you continue. If appropriate, you can politely tell the officer that you thought you had a First Amendment right to petition and ask why you are being told to stop.

Try to get the officer's name. You can file a complaint against the officer with the appropriate police department. You may also seek help from the ACLU of Michigan by filling out a complaint form on our website, www.aclumich.org. The ACLU might make a phone call, write a letter, or, in some circumstances, bring a lawsuit on your behalf to ensure that the police respect petitioners' First Amendment freedoms in the future.

GENERAL TIPS

- Before petitioning in a city or in a park you may wish to check its website to see whether there are ordinances or rules addressing petitioning.
- Before petitioning on private property – e.g., an apartment building, a private "gated community," or a religious institution – you may wish to seek permission to do so.
- Bring a copy of this document with you in the event someone questions your right to petition.
- If you have any questions, consult with a lawyer, or contact the ACLU through our website, www.aclumich.org, or by calling (313) 578-6800.