

Discriminatory Restrictions

Are you being discriminated against?

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Streetwise is a quarterly newsletter for the Center for Religious Expression (CRE) Truthspeakers. CRE is a servant-oriented, non-profit 501(c)(3) Christian legal organization dedicated to the glory of God and the religious freedom of His people. The Truthspeakers are CRE's partnering members, who receive CRE's annual subscription to **Streetwise**, and more. You can become a Truthspeaker today, visiting <https://mailchi.mp/840f2e25c021/truthspeakers> and paying the \$120 annual subscription fee. If the fee is not affordable, CRE will waive it.

The First Amendment plainly does not tolerate the government discriminating on the basis of the content or viewpoint of speech. Perhaps because of this bright-line rule, such blatant discrimination is not that common. More often, discrimination against speech is more subtle. To ensure your rights are protected while engaging in public ministry, it is essential to know how to ask questions to tease out whether discrimination is occurring.

If police are allowing someone else to do the same thing you are (particularly within eyeshot), you need to ask why that is. If the response is that the others don't qualify as "protestors" because of what they're saying, it's probably discrimination. But the response could be, for example, that the other person has a permit, or that they are doing it in a "proper" location where you too will be allowed to speak. These reasons may or may not ultimately be discriminatory, but they provide a guidepost by which to check the claim.

If police are allowing someone else to do something similar, like stand on a sidewalk, whereas you

cannot stand there to hand out tracts, you should question what the difference is between those activities. Perhaps the police view handing out tracts as "obstructing traffic" but not just standing there, in which case finding out why handing out tracts is more "obstructive" than just standing there will be crucial.



This can be a very nuanced analysis, so the more clarity you can receive explaining the difference between your speech and someone else's, the better. So keep in mind: questions are better than accusations. Through questions you might learn how you are treated differently because of your beliefs. Asking enough and the right questions can bring into focus the reason why police distinguish between you and someone else, and help secure your rights.

CRE Seeks Free Market of Ideas at Farmer's Market

CRE recently filed a federal lawsuit against the City of El Paso, Texas, challenging a rule that discriminatorily targets and bans religious proselytizing at a weekly city-run Farmer's Market.



Last August, CRE client and Truthspeaker Ryan Denton went to the El Paso Downtown Artist and Farmer's Market to peacefully share his faith with others. But moments after he started, he was stopped by the director of the

market and a law enforcement officer, who warned he could not continue due to market rules.

CRE sent a letter to El Paso officials pointing out the impropriety of El Paso's ban on Denton's speech, but El Paso refused to back down, invoking a market rule that prohibits "religious proselytizing" as such. Though the market rules allow buskers to perform for money in the very place where Denton is banned, Denton can't speak there. CRE filed suit to right this wrong.

This blatantly discriminatory rule cannot stand. The government cannot prohibit religious speech in places where other expression is allowed.

CRE Asks Court to Overturn Speech Ban

In late April, CRE filed a lawsuit against Commonwealth of Pennsylvania officials, seeking relief from a policy prohibiting evangelists from standing on the perimeter of a public park when a free and open gay pride festival is occurring therein.

Last July, CRE client Stephen Garisto, along with a few friends, went to the grassy curtilage on the edge of Soldiers' and Sailors' Grove Memorial Park, a public park right next to the state capitol, to share his faith with attendees of the Central Pennsylvania Pride Festival occurring inside the park. This perimeter area was a good

distance from any booths, so there was no risk of blocking traffic.

Yet, just as Garisto and friends arrived, they were stopped by an officer of the Capitol Police Department, who ordered them to go across the street, behind a couple dumpsters full of trash. For reason, the officer claimed they were trespassing, asserting that the Pride Festival's permit covered curb-to-curb. Forced to go across the street and behind the garbage, Garisto and friends had trouble reaching anyone.

CRE sent a letter to capitol officials on Garisto's behalf,

asking they cease the ban, but they refused to do so, explaining that they support the banishment of those deemed "protestors" of the event. CRE filed suit to restore Garisto's rights, and hopefully by next Pride Festival.

The public is free to walk throughout the park during the festival. The only difference between Garisto and other members of the public is that the Pride Festival organizers did not like Garisto's message. Government's enforcement of censorship is discriminatory and unconstitutional.

Lawsuit Challenges Discriminatory Mayor Order Closing Safe Church Services

Temple Baptist Church in Greenville, Mississippi wanted to be a light to its community in the midst of the coronavirus pandemic. Complying with CDC guidelines and the Governor's shelter-in-place order, the church replaced its in-person church services with "drive-in" services, allowing members to park their cars in the church parking lot (with windows rolled up) and tune into the service via short-range FM radio. It was a safe, legal, and creative way to continue preaching the Word.

But the City of Greenville wouldn't have it. On April 7, its mayor issued an executive order targeting and banning drive-in church services. And, the very

next day, it enforced the ban vigorously, sending police to issue \$500 citations to each member of Temple Baptist Church who attended the drive-in service that day. Yet, the City continued to allow drive-in restaurants to operate with patrons' windows *down*. So in Greenville, you could get a hamburger from Sonic with your window down, but you couldn't get the Bread of Life at church with your windows up.

The City's ban on drive-in services was nonsensical and discriminatory against churches, prompting CRE and co-counsel to file suit to eliminate the unconstitutional order. And, within 2 weeks, the City reversed its order, allowing drive-in

services to continue for the time being.



As of this writing, the lawsuit is still going. Please remember to pray for this case, as it is an emerging issue on a critical topic for the freedom to speak and believe.

Ask Nate

Q: Do coronavirus lockdown orders violate the First Amendment?

A: Possibly. It's impossible to analyze all orders enforced across the country, but the non-discrimination principle can help provide guidance.

Most restrictions have a set of exceptions, carving out activities deemed "essential." One common exception allows outdoor activities. People need fresh air,

physical exercise, to walk their dogs, and to go get food and supplies.

If such activities are allowed, there should be no reason why you can't engage in speech outdoors, as long as you take the same precautions as everyone else, like "social distancing" (usually keeping 6 feet away from others), which might hinder certain forms of expression (like handing out literature).

Keep in mind that this current situation is extraordinary and hopefully, temporary, such that courts will likely be willing to overlook what might otherwise be a constitutional violation. Be **especially** careful to avoid arrest or citation.

If you have a question for future "Ask Nate" articles, please email your question to truthspeakers@crelaw.org.