

First Amendment Audits



First Amendment Clinic

School of Law

UNIVERSITY OF GEORGIA

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Disclaimer

- ★ This training provides general information
- ★ This training does not form an attorney-client relationship
- ★ The information contained in this presentation is accurate as of the date it was given, but law is subject to change

What are First Amendment Audits?

“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.”

FirstAmendmentAuditing.com

- Form of activism
- Generates content



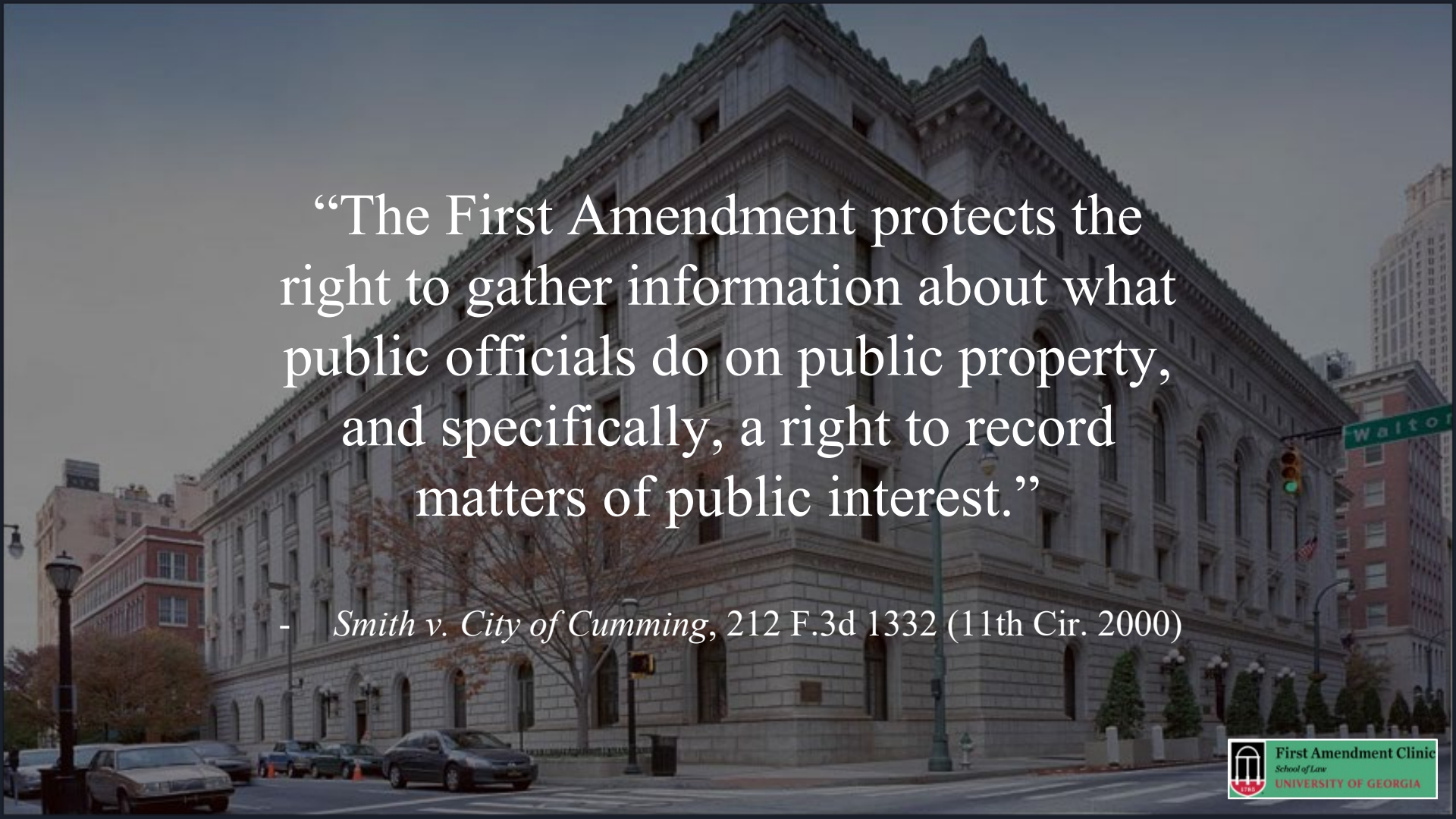


U.S. District Court Judge Tilman (Tripp) Self

“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. *Pretty simple rule.*”

- *Dunn v. Fort Valley*, 464 F. Supp. 3d 1347 (M.D. Ga. 2020).





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- *Smith v. City of Cumming*, 212 F.3d 1332 (11th Cir. 2000)



First Amendment Audit- Union County Sheriff's Office





First Amendment Audit- Milledgeville, GA Police Department





Who Can Auditors Film?

- Auditors can film public employees in public spaces.
 - Auditors **can** single out public employees.
- Auditors can also film members of the general public in public spaces.
 - Auditors **cannot** single out members of the public.





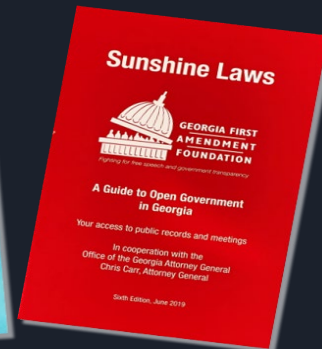
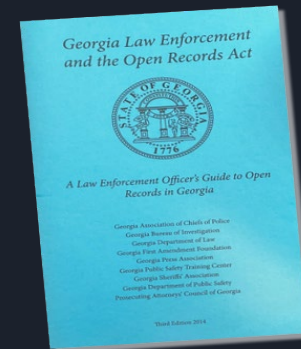
Where Can Auditors Film?

NOTICE
EMPLOYEES
ONLY

- Difference in right to record in spaces where officials perform their public duties vs. spaces that are private
 - Eavesdropping, Surveillance, or Interception Communication Which Invades Privacy of Another (Ga. Code § 16-11-62(2))
- No right to record in a private area with a reasonable expectation of privacy
 - Intrusion Upon Seclusion (Ga. Code §16-11-62(2))

How to Prepare for First Amendment Audits

- Use signage to distinguish between public v. “employee only” or “reserved” private areas
- Determine in advance who will talk to auditor if needed
- Consider posting a sign with guidelines for filming public spaces
- Know the law on open records and the First Amendment right to record
 - Reference the Red Book and Blue Book for open records (available online)



Ways to Respond to Auditors

- Continue business as usual
- Do not try to dissuade the auditor or threaten them with adverse action (e.g., citation, trespass notice, arrest)
- Recognize their right to record other people in public space, as long as the auditor is not singling them out
- Train employees on the right to record and responding to open records requests



Example 1: How to Respond

While filming inside city hall, an auditor tries to enter a restricted area that is for employees only.

How should you respond?



- Acknowledge auditor's right to record
- Whatever an auditor can see from public area is fair to film
- Have a sign designating employees only areas from those open to the public

Example 2: How to Respond

An auditor approaches an individual and asks them why they are there and what they are doing. You can tell that the individual is uncomfortable.

How should you respond?



- Inform the auditor that the right to record applies to public officials
- Ask the auditor to focus on filming only the officials
- Intrusively questioning individual patrons is not protected by the First Amendment

Example 3: How to Respond

You notice that an auditor is in the police station parking lot filming police and private vehicles, including license plates.

How should you respond?



- Auditors are allowed to film parking lots that are open to the public (not fenced or clearly marked with “Employee Only, No Entry” signage)
- Respect the auditor’s right to record

What to do after an audit

- Debrief how the audit went
- Should you make a report?
 - Do not retaliate if they were acting appropriately
 - If there was an actual issue (eg. auditor continues to film within a private space after being told to stop), you could inform local law enforcement of the situation
- If there was an actual issue, you should also document it for your records





When First Amendment Audits Go Wrong



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Georgia Cases on Right to Record

<u>Case</u>	<u>Facts</u>	<u>Outcome</u>
Calhoun (Atlanta)	Interference with citizen's videos	Settled with new policy (2009)
Anderson (Atlanta)	Arrests of citizen filming arrest	Settled with new policy (2010)
Copwatch (Atlanta)	Copwatch video interference	Settled (2011)
Tisdale (Cumming)	Arrest of citizen filming meeting	Settled (2015)
Ruch (Atlanta)	Arrest of journalist filming arrest	Lost pre-trial (2019)
Toole (Atlanta)	Arrest of citizen filming	Settled (2019)
Dunn (Fort Valley)	Arrest of citizen filming	Settled (2020)
Dunn (Marshallville)	Arrest of citizen filming	Settled (2021)
Hassan (Atlanta)	Arrest of journalist filming arrest	Pending (2022)
Randolph (Newton)	Arrest of citizen filming	Pending (2022)

Thank you for listening.
Any questions?