



Training Module 8: Know your rights

Module Summary

Our right to conduct our prolife Mission in public is grounded in the First and foremost individual Right, as guaranteed is the 1st Amendment to the U.S. Constitution:

*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.*

The U.S. federal courts of appeals, including the U.S. Supreme Court, have repeatedly and consistently reiterated and upheld these fundamental rights.

The prevailing rationale has been that the right to free speech is the guarantee of all other rights, and that these laws don't prohibit ALL speech, but just PROLIFE speech (content based).

Perhaps the most compelling language comes from the 2007 case of *McCullen v. Coakley*, 573 US ____ (2014):

"Public streets & sidewalks are one of the few places left to hear debate that you can otherwise not hear, and maybe don't want to hear."

"Talking, counseling and handing out literature to someone on the street to try & convince her not to have an abortion is precisely what the 1st Amendment protects."

"Allowing people to stand outside the zone does not solve the problem because they can't counsel."

DO'S & DON'TS

WHAT WE CAN DO:

Gather
Pray
Fast
Carry signs
Sing
Display literature
Hand out literature
Counsel
Advertise

WHAT WE CAN'T DO:

Block public rights of way (streets, sidewalks, driveways, etc.)
Threaten violence or unlawful activity
Disrupt lawful business activity through disorderly or unlawful conduct
Stalk
Touch others
Trespass on private property
Vandalize, deface or remove the property of others

LAWS

There are some local, state and federal laws that relate to our activities.

LOCAL & STATE EXAMPLES:

Noise ordinances

Permits may be required for sound amplification.
Generally, no permits are required for use of the unamplified human voice.

Sign ordinances

Permits may be required for certain "permanent" or fixed signs.
Generally, no permits are required to hold signs.

Gathering and Crowd ordinances

Permits may be required for gatherings and events of a certain size, in certain locations (parks, etc.) and/or that may affect pedestrian or vehicular traffic.
Generally, no permits are required for peaceful assembly in public, such as streets, sidewalks and public squares.

FEDERAL EXAMPLES:

FACE Freedom of Access to Clinic Entrances Act (1994)

Prohibited

- Blocking a person's access to the entrance of a facility
- Impairing cars from entering and/or exiting a facility
- Physically stopping people as they are trying to walk toward an entrance or through a parking lot
- Making it difficult or dangerous to get in and/or out of a facility
- Trespassing on the property of a facility
- Committing any act of violence on a clinic employee, escort or patient
- Vandalism
- Threats of violence
- Stalking a clinic employee or reproductive health care provider
- Arson or threats of arson
- Bombings or bomb threats

Not prohibited

- Protesting outside of clinics
- Distributing literature
- Counseling
- Carrying signs
- Shouting
- Singing hymns

Safety and conduct

1. Stay safe, always.
2. Try to have at least two vigil participants.
3. Never be alone after dark.
4. Conduct the vigil in a safe and public or otherwise lawful location.
5. If you feel threatened, leave and call the police.
6. If your path is blocked call the police.
7. If you are touched, call the police.
8. If you can safely do so, photograph/film events.
9. If the police arrive, be polite and cooperative.
10. If you are ordered to leave by competent governmental authority, do so and contact 40 Days for Life headquarters.
11. Do not trespass.
12. Do not threaten.

13. Do not touch others.
14. Do not display or discuss weapons.
15. Do not curse.
16. Do not block anyone's path/right-of-way.
17. Obey all laws.

POLITICAL ACTIVITIES

40 Days for Life is a not-for-profit, charitable organization organized under the IRS Code Section 501C3 and the laws of the State of Texas.

As such, we can accept donations and are not subject to certain taxes.

As a result, we are subject to certain rules and regulations.

Violating this ban may result in denial or revocation of the organization's tax-exempt status and the imposition of an excise tax on the amount of money spent on the activity.

Not-for-profit leaders still have 1st Amendment rights to:

Engage in free expression on political matters speaking for themselves, as individuals.

Speak about important issues of public policy

But, Section 501(c) (3) organizations are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.

To remain tax exempt under section 501(c) (3), **leaders cannot make partisan comments in official organization publications or at official functions of the organization.** For example, a leader can attend an event for a particular candidate and express his support of the candidate as long as s/he does not state or otherwise imply that s/he is speaking on behalf of the campaign or 40 Days for Life. However, if leader made the same statement at an official campaign or 40 Days for Life function or in an official publication, that statement would be prohibited political campaign activity.

Remember, if you are unsure - ASK.

NOT Allowed:

Favor or host/participate in activities that favor one candidate a group of candidates and/or one platform over another.

Solicit money for any candidate or candidate's platform.

Oppose a candidate or group of candidates.

If a candidate is invited to a charity's event, make sure all candidates for the office are invited to that event or one of equal stature.

Do not permit political fundraising at your events.

Allowed:

Present in public fora education on major issues conducted in a non-partisan manner.

Conduct activities intended to encourage people to participate in the electoral process.

Hold events to which all candidates for an office are invited.

If a candidate is invited to speak at an event in his or her capacity as a political candidate, you must take steps to ensure that: a. You provide an equal opportunity to participate to all political candidates seeking the same office; b. You do not indicate any support for or opposition to any candidate (including candidate introductions and in communications concerning any candidate's attendance); and c. No political fundraising occurs.

If you invite a candidate to speak in a non-candidate capacity, you must ensure that: a. The individual is chosen to speak solely for reasons other than candidacy for public office; b. The individual speaks only in a non-candidate capacity; c. Neither the candidate nor any representative of the organization makes any mention of the individual's candidacy or the election; d. No campaign activity occurs in connection with the candidate's attendance; e. You maintain a nonpartisan atmosphere on the premises or at the event where the candidate is present; and f. You clearly indicate the capacity in which the candidate

is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in prohibited political campaign activity. However, if the candidate is publicly recognized by the organization, or invited to speak it may cause the organization to be engaged in prohibited political campaign activity. See Inviting Candidate to Speak for more details.

You may take positions on public policy issues, including issues that divide candidates in an election for public office as long as the message does not in any way favor or oppose a candidate. Be aware that the message does not need to identify the candidate by name to be prohibited political campaign activity. A message that shows a picture of a candidate, refers to a candidate's political party affiliations, or contains other distinctive features of a candidate's platform or biography is likely prohibited political campaign activity.

If you post something on your website that favors or opposes a candidate for public office, it is prohibited political campaign activity. Posting information on your website is the same as if you distributed printed material or made oral statements or broadcasts that favored or opposed a candidate. If you establish a link to another website, you are responsible for the consequences of establishing and maintaining that link, even if you do not have control over the content of the linked site. Because the linked content may change, you should monitor the linked content and adjust or remove any links that could result in prohibited political campaign activity.

You and your campaign may not make a contribution to a political organization described in section 527 (such as a candidate committee, political party committee or political action committee (PAC)). Nor may you establish and maintain a separate segregated fund under section 527.

FAQ:

I know 40 Days for Life is non-political. Can a public official speak at my vigil?

Possibly. We need to know:

1. What is the politician's name and political party?
2. Who invited the politician? Or did the politician make an unsolicited offer to speak?
3. Are any other politicians invited/attending?
4. Is the politician from the district where the vigil is held? If not, how far away is the district?
5. When is the politician next running for election?
6. What would the politician speak about?

WHAT VIGIL SHOULD DO:

1. Notify the candidate(s) that 40DFL is a 501C3 and we can't hold political activities.
2. Send all of these items to the candidate(s), in writing, and get a confirmation of understanding and agreement.
3. Vigil literature should state (in general terms, these are NOT the exact words) that we neither endorse the candidate or the platform; and that s/he is coming as a prolife speaker, not candidate; and that it is not a political rally; and that no funds will be solicited or accepted.
4. Tell candidate(s) that (in general terms these are NOT the exact words) s/he must limit speech to prolife issues and personal opinions and that s/he can state that s/he is a candidate but not ask for donations, support, votes and the like.
5. 40DFL participants should not wear and/or have political signage and should refrain from any political speech

The conditions above should be expressed to the candidate in writing by the campaign

CAN DO:

1. Can educate folks on prolife laws, (but not ask for direct support of any particular pending law). E.g., generally referencing defunding PP is fine, but can't say e.g., "Contact your US Rep and tell him to vote for/against xyz bill."
2. Can say what they like about non-political entities/people (e.g., PP).
3. Can endorse 40DFL.
4. Should state that s/he is not present as a candidate but as a (*sitting* congressman, senator, state rep, as applicable) or as a prolife.

CANNOT DO:

1. Cannot stump for or ask for (solicit) votes for self or other candidates.
2. Cannot put-down/disparage or even name opponents running for any office, anywhere; as they have no way to respond.
3. Cannot have political paraphernalia such as signs, t-shirts, hats, flyers or other campaign materials including Petitions.
4. Cannot solicit donations.
5. Cannot explain their platform except prolife platform and record.