



Rights of Canvassers in Tennessee

What is Canvassing? Why is it important?

Canvassing is an organized and systematic effort to speak directly to individuals, often by going from home to home. Canvassing is a form of charitable, or non-commercial, soliciting, and it is common among political campaigns, grassroots fundraising, community-awareness efforts, and membership drives.

Laws governing solicitation regularly distinguish between *commercial* solicitation by businesses and *non-commercial* solicitation by religious, political, or charitable groups. For example, get-out-the-vote (GOTV) efforts—which help people register to vote, encourage voting, and explain how to vote—are a regularly occurring form of non-commercial solicitation, as are efforts to inform voters about a particular political candidate. In contrast, going door-to-door to entice homeowners to hire a company to install new windows is a form of commercial solicitation.

Because canvassing is a way to convey ideas, messages, and information it is an important tool in our democracy and is protected as speech under the First Amendment.

The Law Generally

Canvassing by political, religious, or charitable groups—as distinguished from commercial solicitation—is protected by the First Amendment of the U.S. Constitution. Thus, local governments or municipalities must have a real and substantial reason to burden protected speech when they do so. The U.S. Supreme Court’s precedents extensively discuss the “historical importance” of door-to-door canvassing as a vehicle for the “dissemination of ideas” and central to our “constitutional tradition of free and open discussion.” *Watchtower Bible and Tract Soc’y of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 122 S.Ct. 2080 (2002). However, local governments may still regulate First Amendment activities, including canvassing, under certain conditions, if the municipality has a legitimate enough motive to survive judicial review.

The Sixth Circuit Court of Appeals, which includes Tennessee, tests the legality of laws regulating canvassing by considering whether the law is a reasonable regulation of the time, place, and manner of canvassing. *Ohio Citizen Action v. City of Englewood*, 671 F.3d 564, 571 (6th Cir. 2012). Time, place, and manner restrictions on First Amendment activities like canvassing are constitutional only when they are content-neutral, serve a legitimate government interest, and leave open ample alternative channels of communication. *Ass’n of Com’y Orgs. For Reform Now v. City of Dearborn*, 696 F.Supp. 268, 272 (E.D. Mich. 1988).

Specific Regulations

Registration, permitting, or licensing requirements

In *Watchtower Bible*, the U.S. Supreme Court ruled that ordinances requiring canvassers to apply for and obtain a permit before door-to-door canvassing violates the First amendment. 536 U.S. at 150. The Court concluded that “it is offensive” to the First Amendment and 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.” Despite this precedent, municipalities have, on occasion, continued to pass such ordinances, and law enforcement may still enforce them if they go unnoticed and unchallenged. If a public official tells you that you need to obtain a permit before canvassing, or if you believe that a city ordinance may require a permit before canvassing within city limits, please contact ACLU-TN or an attorney.

Background checks, photos, and waiting periods

While the Supreme Court has not directly addressed the constitutionality of local requirements for background checks, photos, waiting periods, and “good moral character,” these requirements are “constitutionally suspect.” *Ohio Citizen Action v. City of Mentor-On-The-Lake*, 272 F.Supp.2d 671, 683 (N.D. Ohio 2003). Similar provisions have been invalidated by a variety of courts. See, e.g., *Nat’l People’s Action v. Village of Wilmette*, 941 F.2d 1008 (7th Cir. 1990) (fingerprinting requirement for political canvassers violated First Amendment); *Ohio Citizen Action v. City of Seven Hills*, 35 F.Supp.2d 575 (N.D. Ohio 1997) (“good moral character” canvassing requirement violated First Amendment by giving local officials unbridled discretion). These requirements are constitutionally suspect because the Supreme Court has stated that the First Amendment guarantees the right to *anonymous* speech, and background checks and other identification requirements violate this principle. See *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 115 S.Ct. 1511 (1995). Waiting periods and notice requirements are also constitutionally suspect, particularly when the ordinances are written in vague terms. See *Hynes v. Mayor & Council of Borough of Oradell*, 425 U.S. 610, 620-21 (1976).

Curfews

While neither the Supreme Court nor any other federal court has ever formally ruled on the hours of the day between which canvassers must be allowed to knock on doors, ordinances restricting canvassing in the early evening, generally before 9:00 p.m., have been invalidated as unconstitutional. See *Ohio Citizen Action v. City of Englewood*, 671 F.3d at 474. Generally, the best times to canvass tend to be weekend mornings and early evenings (before sunset) on weekdays, and it is best to avoid canvassing after dark for your own safety.

Important Issues to Look For

Talk to an attorney if you encounter:

- An ordinance that requires a permit for non-commercial (canvassing) activities;

- An ordinance that requires a background check, photographing and/or fingerprinting by a state agency, or “good moral character” to canvass;
- An ordinance that requires you to identify yourself on demand to any public official or resident while canvassing;
- An ordinance that requires advance or written notice of intent to canvass;
- An ordinance that prohibits canvassing in the early evening (earlier than 9:00 PM);
- An ordinance that treats commercial solicitation and non-commercial canvassing as synonymous for purposes of the ordinance.
- Any local law enforcement officer telling you that the ordinance requires any of the above.