

MY name is William J Dorsett and I am an artist and a busker living in San Diego, Ca. I have been fighting for buskers rights since 2008.

This is a small guide to help you fight for your rights as a busker, artist or any other first amendment protected expressive activity! There are dozens of court cases that can prove this. I am putting a few quotes with links to those cases in this guide, but first I must tell you step by step what to do if you get messed with.

1st and foremost learn and know your rights. They are important and will be on this guide. 2nd be ready to do research as you may have to look up your city municipal code to see the law that they may use against you as a busker or artists. Usually if you get a ticket it will have a municipal code number for example in San Diego there is a vendor law, and in it there is an exemption to first amendment protected vending.

That code is” §36.0113 §36.0114 (0-2022-43 REV.) Non~Applicability 00 The following persons, entities or activities are exempt from the requirements of this Division; ID Any vendor or individual engaged solely in artistic performances. free speech. political or petitioning activities, or engaged solely in vending of items constituting expressive activity protected by the First Amendment such as newspapers. leaflets. pamphlets, bumper stickers. or buttons; Agencies of any federal, state or local governments: Any vendor of services that are otherwise permitted or authorized by the City of San Diego; and Any lessee or pennittee of the City vending on City-owned property where vending is authorized under a City lease or pennit. “

Your city code may differ, as I worked over a year getting this put into the new vendor laws to make sure buskers are protected.

The fact is that all art, and performance art (except fire and other dangerous performances like knife juggling) is protected by the first amendment. Our first amendment protections extend to the public forum. So anywhere the public gathers is an open forum for first amendment protections. Some municipalities will try to create laws that restrict this, but those laws are usually found to be unconstitutional and buskers who are harassed under those laws could potentially sue a city or county who has those laws in place.

So here is what you need to do.

1 have the necessary documents to prove that there are exceptions and protections for first amendment activities. This is to let law enforcement know that they may be in violation of the law if they continue contact with you over your rights.

2 Before any discussion with the police, make sure you are filming.

3 If you get a ticket you will have to contact various city officials depending on who gives you a ticket. If it is police you will need to contact the supervisor of the division you were ticketed with, you might also want to contact the city council, the internal affairs office of the police division

you were cited, the citizens review board of police practices, and also contact the nation resolution of conflict. If you are cited by a park ranger you need to find and make contact with the heads of the park. Regardless of who cites you, your goal is to contact the supervisors of that division and work your way up the chain of command, reminding everyone on the way up that the chain of command is as responsible for the crime as the officer who cited you! This is usually enough to get a ticket dismissed and to get some police or other law enforcement to back off. Though there are some LEOs that think their authority is all that matters. Those officers are going to be a lot harder to deal with, and you may have to make contact with several city offices and officials before you can get anything done.

4 Be sure to take all the information on your rights to the city public defender's office so they can defend you if needed and so others who end up in court will have defense as well. As you may be summoned for any citations you get and do not get dropped. You will also need all your evidence ready for court including documents that show your constitutional protections.

5 Be sure to write out all details of the encounter or encounters. Keep track of everything. Make sure you use facts and not emotions. The facts are what matters. Who was the officer? What did they say? How did they react when you asserted your rights? Where were you? What time was it? Did the officer make contact with any other buskers? Write everything down in a concise timeline with all of the details. Make sure all of your details are clearly written and explain the situation well. Included the provided court quotes with links to cases and any municipal code that shows the citation reasoning or that shows your first amendment protections.

6. Take what you have written and go to various legal sites where you can find lawyers. You want civil rights attorney's. You will want to mass email as many lawyers as you can. It took nearly 100 emails to get the lawyer I found. You want to find one willing to take the case on contingency! Which basically means they don't get paid unless you win the case. You will also want to send all of your details to the media and to all parties that might be involved in your case. It's good to put a city on notice that they are violating civil rights and are breaking laws.

7. Be sure to store and keep everything you have gathered as it may be necessary to have for future problems. This won't be a one time thing, and you may have to deal with this over and over due to a total lack of law enforcement education.

8 Don't give up, you will come across road blocks, and will feel like you are getting nowhere. This is when you need to double down. Gather more evidence, do more research, contact more people in the chain of command, reach out to the media and lawyers often. Try and educate your city officials of the consequences if they continue to allow first amendment rights violations in their city. Even the Mayor of a city can be held accountable if they learn of the violations and do nothing to change the issue.

9 If it goes to court and you have a case against a city you could win some money. Much of that will go to your lawyer, but this sends a strong message to the city. "Stop Violating my rights."

10. If you want to busk, you need to know your rights and you need to be ready and willing to

fight for them or willing to pack up and move along every time a cop tells you to. Its up to you, you can be timid and let them walk all over you. You still might do well as a busker and you may find that easier than fighting for your rights. The fact is though eventually that will cost you. You might not be able to pay your bills and the city might take away your rights all together and then you can't busk at all in that city. If you face them, and have yourself prepared you can beat them. They have to abide by the law that they swore to protect and that is the whole of the US Constitution. Make them abide by the law!

Below are court case quotes with links to the full case, This will aid you in your battle. I will also include a link to my blog which has lots of other information on buskers rights. Please share this guide with your artists and performer friends so they too can be prepared.

Concerning the First amendment protected expressive activity and sales:

"The degree of First Amendment protection is not diminished merely because the [protected expression] is sold rather than given away." *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S.

"It is well settled that a speaker's rights are not lost merely because compensation is received; a speaker is no less a speaker because he or she is paid to speak."; *Village of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620 (1980)

"Even purely commercial speech is entitled to significant First Amendment protection." See *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457

"It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it." See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137

"in a facial challenge to an ordinance, that the merchandise at issue was protected" *Gaudiya*, 952 F.2d at 1065

"The protection of the First Amendment . includes . music, pictures, films, photographs, paintings, drawings, engravings, prints, and sculptures"; *Bery v. City of New York*, 97 F.3d 689,

"Paintings, photographs, prints and sculptures . always communicate some idea or concept to those who view it, and as such are entitled to full First Amendment protection."; see also *Piarowski v. Ill. Cmty. Coll. Dist.* 515,

"The First Amendment shields more than political speech and verbal expression; its protections extend to entertainment, *Winters v. New York*, 333 U.S. 507,

film, *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495,

theater, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546,

music, without regard to words, *Ward v. Rock Against Racism*, 491 U.S. 781

peaceful marches to express grievances to governmental authorities, *Gregory v. Chicago*, 394 U.S. 111,

"The Constitution looks beyond written or spoken words as mediums of expression." *Hurley*, 515 U.S.

If the First Amendment reached only "expressions conveying a 'particularized message,'" its "protection would never reach the unquestionably shielded painting of Jackson Pollock, music of Arnold Schönberg, or Jabberwocky verse of Lewis Carroll."

Id. at ----, 115 S.Ct. at 2345 (quoting from *Spence v. Washington*, 418 U.S. 405). The First Amendment has surely been valued as essential to the preservation of a political democracy in this country; thus, even the pamphleteer espousing political sedition has been shielded from governmental suppression. See, e.g., *Whitney v. California*, 274 U.S. 357

(Brandeis, J., concurring) (“even advocacy of violation [of the law], however reprehensible morally, is not a justification for denying free speech where the advocacy falls short of incitement and there is nothing to indicate that the advocacy would be immediately acted on”).

“The First Amendment’s fundamental purpose, however, is to protect all forms of peaceful expression in all of its myriad manifestations.” *Aboud v. Detroit Board of Education*, 431 U.S. 209

“visual images are “a primitive but effective way of communicating ideas . a short cut from mind to mind.” *West Virginia State Board of Education*, 319 U.S. at 632,

“The sale of protected materials is also protected.” See *Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750

street marketing is in fact a part of the message of appellants’ art. As they note in their submissions to the court, they believe that art should be available to the public. Anyone, not just the wealthy, should be able to view it and to buy it. Artists are part of the “real” world; they struggle to make a living and interact with their environments. The sale of art in public places conveys these messages. *Berry v the City Of New York III*

While these objects may at times have expressive content, paintings, photographs, prints and sculptures, such as those appellants seek to display and sell in public areas of the City, always communicate some idea or concept to those who view it, and as such are entitled to full First Amendment protection. *Berry V New York III*

(only regulations which do not discriminate among speakers or ideas are content-neutral). The ordinance’s effective bar on the sale of artwork in public places raises concerns that an entire medium of expression is being lost. See, e.g., *City of Ladue v. Gilleo*, 512 U.S.

A content-neutral regulation may restrict the time, place, and manner of protected speech, provided it is “narrowly tailored to serve a significant governmental interest” and “leave[s] open ample alternative channels for communication.” *Ward*, 491 U.S. at 791, 109 S.Ct. at 2752, quoting *Clark v. Community for Creative Non-Violence*, 468 U.S. 288,

The City certainly has a significant interest in keeping its public spaces safe and free of congestion. The license requirement as it relates to appellants, however, which effectively bars them from displaying or selling their art on the streets, is too sweeping to pass constitutional muster. See, e.g., *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410,

The City points to nothing on this record concerning its need to ensure street safety and lack of congestion that would justify the imposition of the instant prohibitive interdiction barring the display and sale of visual art on the City streets. See *Wright v.*

Chief of Transit Police, 558 F.2d

city must find less restrictive alternative than complete ban on newspaper vending in subways); *Loper v. New York City Police Dep't*, 999 F.2d 699 (street begging constitutes expressive conduct which cannot be totally barred without unconstitutional interference with First Amendment rights.)

Displaying art on the street has a different expressive purpose than gallery or museum shows; it reaches people who might not choose to go into a gallery or museum or who might feel excluded or alienated from these forums. The public display and sale of artwork is a form of communication between the artist and the public not possible in the enclosed, separated spaces of galleries and museums.

Furthermore, to tell appellants that they are free to sell their work in galleries is no remedy for them. They might not be at a point in their careers in which they are interested in reaching the public that attends exhibits at art galleries-if, indeed, they could get their works accepted for showing. Appellants are interested in attracting and communicating with the man or woman on the street who may never have been to a gallery and indeed who might never have thought before of possessing a piece of art until induced to do so on seeing appellants' works. The sidewalks of the City must be available for appellants to reach their public audience. *Berry V New York III* the City's total ban of exhibitions and performances from the sidewalks of the central business district was an overbroad and hence unconstitutional restriction on speech, and that the permit scheme allowed city officials to dictate what speech could be heard in the designated open spaces of the district, in violation of the constitutional doctrine prohibiting prior restraints on speech. *Lee Davenport V City Of Alexandria*

A compelling governmental interest unrelated to speech must be served by the restriction on free expression, and the restriction must be drawn with narrow specificity to be no more restrictive than necessary to secure the government's interest. *Grayned v. City of Rockford*, 408 U.S. 104,

blic questions." *Hague v. Committee for Indus. Org.*, 307 U.S. 496, 515, 59 S.Ct. 954, 963, 83 L.Ed. 1423 (1939). The Supreme Court has repeatedly recognized public streets as "the archetype of a public forum." *Frisby v. Schultz*, 487 U.S. 474,

The items sold here include music, buttons, and bumper stickers bearing political, religious, and ideological messages. These are expressive items, and they do not lose their constitutional protection simply because they are sold rather than given away. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640,

In *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), the Supreme Court found that where the commercial and expressive parts of speech are "inextricably intertwined," a court could not parcel out the protected and unprotected parts of the speech. This court has applied the

“inextricably intertwined” standard to merchandise like that at issue here; the Gaudiya court found that the plaintiffs' street sale of merchandise with messages affixed to the products was fully protected because the commercial and noncommercial aspects of speech “inextricably intertwined.” Gaudiya, 952 F.2d at 1064-65; see also One World, 76 F.3d at 1012 (finding sale of merchandise bearing political, religious, philosophical or ideological messages “inextricably intertwined” with other forms of protected expression).

In a traditional public forum, time, place, and manner restrictions on protected speech are acceptable only if they are content neutral, “serve a significant state interest in a narrowly tailored fashion,” and “leave open ample alternative communication channels.” Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37

The First Amendment states that “Congress shall make no law . abridging the freedom of speech, or of the press.” U.S. Const. amend. I, 2. Expressive activity must be particularly protected in a traditional public forum Berger V the City of Seattle

A licensing statute lacks content neutrality if it burdens only certain messages or if it imposes a burden on all messages, but allows officials unchecked discretion to treat messages differently Berger v the City of Seattle

A licensing standard which gives an official authority to censor the content of a speech differs toto coelo from one limited by its terms, or by nondiscriminatory practice, to considerations of public safety and the like.” Niemotko v. Maryland, 340 U.S. 268, 282 [71 S.Ct. 328, 95 L.Ed. 280] (1951) (Frankfurter, J., concurring in result). “[T]he [permit] required is not the kind of prepublication license deemed a denial of liberty since the time of John Milton but a ministerial, police routine for adjusting the rights of citizens so that the opportunity for effective freedom of speech may be preserved.” Poulos v. New Hampshire, 345 U.S. 395, 403,

in Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 536 U.S. 150, 122 S.Ct. 2080, 153 L.Ed.2d 205 (2002).<sup>15</sup> There, the Court invalidated an ordinance requiring any solicitor or canvasser to obtain prior permission before going on private property to promote a cause and to carry a permit on his or her person.<sup>16</sup> 536 U.S. at 155, 122 S.Ct. 2080. The Court found that the permit scheme unduly broad and without relationship to a valid government objective.

Notable Court Cases:

Sparks V White. (Visual art)

Berry V the City of New York (visual art)

Turley V The Police Department of the City of New York (sound amplification)

Lee Davenport, Appellee, v. City of Alexandria, Virginia, Charles Strobel, Chief Of police, Douglas Harman, City Manager, Appellants, 710 F.2d 148 (4th Cir. 1983) (concerning street performance)

NMI PERRY v. LOS ANGELES POLICE DEPARTMENT (music performance and the sales of cds)

Berger V City of Seattle (street magick, street performing, and permitting schemes)

For more information visit these sites

<https://artistandbuskerrights.blogspot.com/>

[http://en.wikipedia.org/wiki/Busking\\_\(U.S.\\_case\\_law\)](http://en.wikipedia.org/wiki/Busking_(U.S._case_law))