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# Free Speech for Life Act

*Model Legislation*



*Advancing the Human Right to Life  
in Culture, Law, and Policy*

# FREE SPEECH FOR LIFE ACT

HOUSE/SENATE BILL No. \_\_\_\_\_  
By Representatives/Senators \_\_\_\_\_

## Section 1. Title.

This Act may be known and cited as the “Free Speech for Life Act.”

## Section 2. Legislative Findings and Purposes.

(a) The [Legislature] of the State of [Insert name of State] finds that:

[Sections (a)(1) and (2) pertain to States that provide for Home Rule; otherwise omit.]

- (1) Pursuant to Section [Insert provision] of the [State Code] (“the Home Rule Statute”), [Insert name of State] counties and municipalities have no power or authority beyond that granted by the State legislature.
- (2) The Home Rule Statute provides that municipal governing authorities have the power to adopt orders, resolutions, and ordinances governing municipal affairs that are not inconsistent with the United States Constitution, federal law, the [Insert name of State] Constitution, the [State Code], and any other statute or law of the State of [Insert name of State].
- (3) “The vitality of civil and political institutions in our society depends on free discussion. . . . it is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).
- (4) Free speech may “invite dispute” and “strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea,” but is nevertheless protected by the First Amendment. *Id.* at 4.
- (5) The First Amendment safeguards the right to petition the government as “[f]reedom of expression embraces more than the right of an individual to speak his mind. It includes also his right to advocate and his right to join with his fellows in an effort to make that advocacy effective.” *NAACP v. Button*, 371 U.S. 415, 452 (1963).
- (6) “[O]ne of the foundations of our society is the right of individuals to combine with other persons in pursuit of a common goal by lawful means.” *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 933 (1982).
- (7) The right of peaceful assembly is a fundamental right under the Constitution and “cannot be denied without violating those fundamental

principles of liberty and justice which lie at the base of all civil and political institutions.” *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937).

- (8) “[T]he guiding First Amendment principle that the ‘government has no power to restrict expression because of its message, its ideas, its subject matter, or its content’ applies with full force in a traditional public forum.” *McCullen v. Coakley*, 573 U.S. 464, 477 (2014) (citation omitted).
  - (9) Sidewalks and public ways are traditional public forums, held open from time immemorial for public speech, peaceful assembly and the distribution of printed material on matters of public interest. *Hague v. CIO*, 307 U.S. 496, 515–516 (1939).
  - (10) In a traditional public forum, the government may not engage in viewpoint discrimination, or the enactment and/or enforcement of laws that disfavor certain speech based on its content or viewpoint. *Reed v. Town of Gilbert*, 576 U.S. 155, 169 (2015)
  - (11) “The liberty of a society is measured in part by what its citizens are free to discuss among themselves. [A] scheme of disfavored-speech zones on public streets and sidewalks . . . are antithetical to our entire First Amendment tradition.” *Hill v. Colorado*, 530 U.S. 703, 768 (2000) (Kennedy, J., dissenting).
  - (12) *[Insert provision]* of the Constitution of the State of *[Insert name of State]* states that *[Insert text of state constitutional rights to freedom of speech, peaceful assembly, and petition the government]*.
  - (13) The rights to free speech, peaceful assembly, and petition the government protected by the U.S. and State constitutions includes the right to verbal and nonverbal communication, including, but not limited to: displaying signs, passing out leaflets or handbills, singing, praying, and engaging in oral protest, education, or counseling.
  - (14) Protestors, counselors, and passersby have the right to speak, even unpopular messages, on public sidewalks, provided that they do not violate state or local criminal law.
  - (15) Laws infringing on free speech, peaceful assembly, and petitioning in the public forum deny the speaker’s right to speak and the audience’s right to listen and act upon the information offered.
- (b) Based on the findings in subsection (a) of this Act, it is the purpose of this Act to affirmatively protect the First Amendment rights, as well as their state constitutional counterparts, of all who seek to communicate messages on sidewalks in *[Insert name of State]*.

### Section 3. Definitions.

- (a) **“First Amendment Activity”** shall mean activities protected under the First Amendment of the United States Constitution or activities protected under *[Insert state constitutional provisions]* of the Constitution of the State of *[Insert name of State]*.
- (b) **“Reproductive Health Facility”** shall mean reproductive health services provided in a hospital, clinic, physician’s office, or other medical facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

#### Section 4. Prohibitions.

- (a) No county or municipality shall enact an ordinance restricting First Amendment Activity in the vicinity of Reproductive Health Facilities.
- (b) Nothing herein shall be interpreted to prohibit municipal governing authorities from enacting and enforcing reasonable time, place and matter restrictions in service of a significant government interest, provided, however, that any such restrictions employ clear, published, content- and viewpoint-neutral criteria, and provide for ample alternative means of expression.
- (c) If the effect of a time, place and manner restriction is to render ineffective or impossible any communication with the intended audience, then that ordinance is neither reasonable nor providing ample alternative means of expression, and it shall be in violation of this law.

#### Section 5. Enforcement.

- (a) Civil Right of Action:
  - (1) In addition to whatever remedies are available under the common or statutory law of this State, measures taken to administer or enforce an ordinance held unlawful under this Act shall constitute the basis for an aggrieved person to commence a civil action.
  - (2) In any action under subparagraph (1), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses.
- (b) Action by Attorney General of the State of *[Insert name of State]*:
  - (1) If the Attorney General of the State of *[Insert name of State]* has reasonable cause to believe that any person or groups of persons is being, has been, or may be injured by conduct constituting a violation of this Act, the Attorney General may commence a civil action in any appropriate *[Insert court name]* of the State of *[Insert name of State]*.

- (2) In any action under subparagraph (1), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief, and compensatory damages to persons aggrieved. The court, to vindicate the public interest, may also assess a civil penalty against each respondent in the amount of \$10,000 for each violation.

#### Section 6. Construction.

Nothing in this Act shall be construed as creating or recognizing a right to abortion.

#### Section 7. Right of Intervention.

The [Legislature], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this Act or any portion thereof is challenged.

#### Section 8. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

#### Section 9. Effective Date.

This Act shall take effect on [Insert date].

For further information regarding this or other AUL policy guides, please contact:

AMERICANS UNITED FOR LIFE  
1150 Connecticut Avenue NW, Suite 500  
Washington, D.C. 20036  
202.741.4917 | [Legislation@aul.org](mailto:Legislation@aul.org)

[www.AUL.org](http://www.AUL.org)

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