



Know Your Rights: Demonstrations and Protests

You have the right to express yourself, gather peacefully, and ask your government to address your concerns. The government can set rules regulating these activities. But, the regulations cannot favor one side over another and must be necessary to protect public safety and order.

The rules regarding permits and the use of public property may vary depending on where you are. It is important that you understand the rules that apply to the location that you are in.

GENERAL GUIDELINES

What speech activities are protected by the First Amendment?

Making speeches, handing out leaflets, holding or attending rallies, carrying posters, and demonstrating are protected activities. The First Amendment covers all forms of communication, including music, theatre, film, and dance. It also protects actions that symbolically express a viewpoint: for example, wearing costumes or holding a candlelight vigil.

Can my free speech rights be restricted because of what I say – even if it's controversial?

No, the First Amendment prohibits restrictions based on the content of a person's speech. However, this does not mean that the First Amendment completely protects all types of free speech activity in every circumstance. Police and government officials are allowed to place certain nondiscriminatory and narrowly drawn "time, place and manner" restrictions on the exercise of First Amendment rights.

Can a speaker be silenced for provoking a crowd?

Generally, no. Even the most inflammatory speaker cannot be punished for merely arousing the audience. A speaker can be convicted for incitement only if he or she specifically advocates illegal actions and only if such illegal conduct is likely to imminently occur.

Do counter-demonstrators have free speech rights?

Yes. Although counter-demonstrators should not be allowed to physically disrupt the event they are protesting, they do have the right to be present and to voice their displeasure. Police are permitted to keep two antagonistic groups separated but should allow them to be within the general vicinity of one another.

Where can I engage in free speech activity?

Generally, all types of expression are constitutionally protected in traditional "public forums," such as streets, sidewalks, and parks. In addition, your speech activity may be permitted to take place at other public locations which the government has opened up to similar speech activities, such as the plazas in front of government buildings.

Expressive activity is allowed in public forums as long as it does not interfere with the rights and activities of others – for example, demonstrators may not block pedestrians, business entrances, or traffic. Government may sometimes regulate how these activities take place, but not on the basis of their content or message.

What is a “public forum?”

A public forum is a location generally open to the public and used for the communication of views on political and social issues. Some examples are sidewalks, public auditoriums, fairgrounds, plazas, stadiums, and parks. First Amendment activities cannot overly interfere with the normal use of the location. A public forum may also be a location related in some way to the activity, such as the actual or symbolic target of the protest – for example, citizens opposed to legislation having a rally at the State Capitol. Courts have ruled that certain forums (for example, a military base) can be closed to most or all speech activity due to their “special functions.” Such locations may allow leafletting, but prohibit other activities such as rallies or picketing.

What about schools, universities, and lobbies of public buildings?

Lobbies are not always open to speech activities. However, if they are made available for political campaigning, artistic performances, etc., they must be made available for other similar free speech activities. Note that sidewalks abutting but not on school or other property are public forums.

Public schools (secondary and below): The government can prohibit protest activities by nonstudents on school grounds while school is in session if the event interferes with school activities (such as too much noise or too many people).

Public colleges and universities: Generally, protest activities on the public areas of state university property are entitled to broad First Amendment protection, but public colleges may have rules prohibiting demonstrations by persons other than students, faculty, and staff.

Private schools: Private schools are private property – see next question.

What about private property?

If persons engage in speech activities on private property against the wishes of the owner, they may be subject to arrest and prosecution. Please check with the management of shopping centers before attempting to engage in free speech activities at those locations.

PERMITS

Do we need to get a permit?

The need for a permit depends on the type and size of event, as well as the locality in which it will be held. Generally, events requiring a permit include:

- 1) A march or parade that does not stay on the sidewalk and other events that require blocking traffic or street closure;
- 2) A large rally requiring the use of sound amplifying devices; or
- 3) A rally at certain designated parks or plazas.

Courts have said that some permit requirements for groups are permissible to ensure public safety and that activities are peaceful. Permit requirements, however, must be specific and cannot distinguish between groups or speakers. Individual protesters (not part of a group) do not need a permit.

Many permit procedures require that the application be filed several weeks in advance of the event. However, the First Amendment prohibits such an advance notice requirement from being used to prevent rallies or demonstrations that are rapid responses to unforeseeable and recent events.

Also, many permit ordinances give a lot of discretion to the police or city officials to impose conditions on the event, such as the route of a march or the sound levels of amplification equipment. Such restrictions

may violate the First Amendment if they are unnecessary for traffic control or public safety, or if they interfere significantly with effective communication with the intended audience. A permit cannot be denied because the event is controversial or will express unpopular views.

Check with local government agencies to see if you need a permit, or look for the regulations online. (WWW.MUNICODE.COM has a good collection of municipal and county codes – click Search Free Municipal Code Library, then the map of Virginia.) If you have trouble getting a permit, contact us at intake@acluva.org or 804-644-8022.

What about marches?

Generally, marches are allowed on public sidewalks or streets. Governments may regulate the time, place, and manner of the event to avoid traffic problems and protect public safety. Check to see if you need a permit.

SPECIFIC PROBLEMS

Do I have a right to picket on public sidewalks?

Yes, although a permit may be required. Picketing must be done in an orderly, non-disruptive fashion so that pedestrians can pass by and entrances to buildings are not blocked.

May I distribute leaflets and other literature on public sidewalks?

Yes. You may approach pedestrians on public sidewalks with leaflets, newspapers, petitions, and solicitations for donations without a permit. Tables may also be set up on sidewalks for these purposes if sufficient room is left for pedestrians to pass (although a permit may be required). These types of free speech activities are legal as long as entrances to buildings are not blocked and passers-by are not physically and maliciously detained.

Can government impose a financial charge on exercising free speech rights?

Some local governments have required a fee as a condition of exercising free speech rights, such as application fees, security deposits for clean-up, or charges to cover overtime police costs. Charges that cover actual administrative costs have been permitted by most courts. However, if the costs are greater because an event is controversial (or a hostile crowd is expected) then the courts will not permit it.

Does it matter if other speech activities have taken place at the same location in the past?

Yes. The government cannot discriminate against activities because of the controversial content of the message. Thus, if you can show that similar events to yours have been permitted in the past, but you are told you may not hold an event in the same place, that may indicate that the government is involved in selective enforcement, which is unconstitutional.

What should I do if my rights are being violated by a police officer?

It rarely does any good to argue with a street patrol officer. Ask to talk to a supervisor and explain your position to him or her. Point out that you are not disrupting anyone else's activity and that your actions are protected by the First Amendment. If you do not obey an officer, you might be arrested and taken from the scene. You should not be convicted if a court concludes that your First Amendment rights have been violated.

Contact the ACLU of Virginia

If you feel that your right to free speech has been violated, or if you have trouble obtaining a permit to protest or demonstrate, please contact us.

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