

Your Rights to Demonstrate and Protest

A guide for demonstrators, marchers, speakers and others who seek to exercise their First Amendment rights.

GENERAL GUIDELINES

Q. Can my free speech rights be restricted because of what I want to say – even if it’s controversial?

A. No. The First Amendment prohibits restrictions based on the content of speech. However, this does not mean that the Constitution completely protects all types of free speech activity in every circumstance. Police and government officials are allowed to place certain non-discriminatory and narrowly drawn “time, place and manner” restrictions on the exercise of First Amendment rights.

Q. Where can I engage in free speech activity?

A. 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.

Q. What about free speech activity on private property?

A. The general rule is that free speech activity cannot take place on private property absent the consent of the property owner. However, in California, the courts have recognized an exception for large shopping centers, and have permitted leafleting and petitioning to take place in the public areas of large shopping centers. The shopping center owners, however, are entitled to impose regulations that, for example, limit the number of activists on the property and restrict their activities to designated “free speech areas.”

Most large shopping centers have enacted detailed free speech regulations that require obtaining a permit in advance. It is unclear whether the courts will extend this “shopping center exception” to other types of private property, such as the walkways in front of large free-standing stores, such as a Safeway or a Costco.

Q. Do I need a permit before I engage in free speech activity?

A. Not usually. However, certain types of events require permits. Generally, these events are: 1) a march or parade that does not stay on the sidewalk and other events that require blocking traffic or street closures; 2) a large rally requiring the use of sound amplifying devices; or 3) a rally at certain designated parks or plazas, such as federal property managed by the General Services Administration.

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**

SPECIFIC PROBLEMS

Q. If organizers have not obtained a permit, where can a march take place?

A. If marchers stay on the sidewalks and obey traffic and pedestrian signals, their activity is constitutionally protected even without a permit. Marchers may be required to allow enough space on the sidewalk for normal pedestrian traffic and may not maliciously obstruct or detain passers-by.

Q. May I distribute leaflets and other literature on public sidewalks?

A. Yes. Pedestrians on public sidewalks may be approached with leaflets, newspapers, petitions and solicitations for donations. Tables may also be set up on sidewalks for these purposes if sufficient room is left for pedestrians to pass. 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. No permits should be required.

Q. Do I have a right to picket on public sidewalks?

A. Yes, and this is also an activity for which a permit is not required. However, picketing must be done in an orderly, non-disruptive fashion so that pedestrians can pass by and entrances to buildings are not blocked. Contrary to the belief of some law enforcement officials, pickets are not required to keep moving but may remain in one place as long as they leave room on the sidewalk for others to pass.

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

A. Increasingly, local governments are imposing financial costs as a condition of exercising free speech rights, such as application fees, security deposits for clean-up, or charges to cover overtime police costs. Unfortunately, such charges that cover actual administrative costs or the actual costs of re-routing traffic have been permitted by some courts. However, if the costs are greater because an event is

controversial (or a hostile crowd is expected) – such as requiring a large insurance policy – then the courts will not permit it. Also, regulations with financial requirements should include a waiver for groups that cannot afford the charge, so that even grassroots organizations can exercise their free speech rights. Therefore, a group without significant financial resources should not be prevented from engaging in a march simply because it cannot afford the charges the City would like to impose.

Q. Can a speaker be silenced for provoking a crowd?

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

Q. Do counter-demonstrators have free speech rights?

A. 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.

Q. Is heckling protected by the First Amendment?

A. Although the law is not settled, heckling should be protected, unless hecklers are attempting to physically disrupt an event, or unless they are drowning out the other speakers.

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

A. Yes. The government cannot discriminate against activists because of the controversial content of their message. Thus, if you can show that similar events to yours have been permitted in the past (such as a Veterans or Memorial Day parade), then that is an indication that the government is

involved in selective enforcement if they are not granting you your permit.

Q. What other types of free speech activity are constitutionally protected?

A. The First Amendment covers all forms of communication including music, theaters, film and dance. The Constitution also protects actions that symbolically express a viewpoint. Examples of these symbolic forms of speech include wearing masks and costumes or holding a candlelight vigil.

However, symbolic acts and civil disobedience that involve illegal conduct may be outside the realm of constitutional protections and can sometimes lead to arrest and conviction. Therefore, while sitting in a road may be expressing a political opinion, the act of blocking traffic may lead to criminal punishment.

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

A. It rarely does any good to argue with a street patrol officer. Ask to talk to a superior and explain your position to her or him. 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.

A wallet-sized card containing more practical suggestions about encounters with police officers is available in English, Spanish, and Chinese from the ACLU-NC. The ACLU has recently published a "Know Your Rights" pamphlet that explains your rights if you are stopped by the police, the FBI, the INS or the Customs Service. It is available in Arabic, English, and Spanish, and soon will be available in Farsi, Hindi, Urdu, and Punjabi. You can obtain copies of this pamphlet by calling the ACLU-NC at (415) 621-2493.

Important Numbers

If you have a question about your civil liberties or rights, call the ACLU-NC hotline at:

415/621-2493 (x322)

or the ACLU-NC Complaint Desk from 10AM to 3PM at:

415/621-2488

If you are arrested while engaging in free speech activities, call the National Lawyers Guild Legal Hotline:

415/285-1011

If you want to file a complaint about police misconduct, call, write, or go to the Office of Citizen Complaints at Hall of Justice, 850 Bryant Street, Room 565, S.F., CA 94103:

415/553-1407

**American Civil Liberties Union of Northern California
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San Francisco, CA 94103
415/621-2493**