



Know Your Rights Guide: Protests

This guide covers the legal protections you have while protesting or otherwise exercising your free speech rights in public places. Although some of the legal principles are firmly established, as with many areas of law, free speech law is complex and continually developing. Generally speaking, you are free to exercise your right to protest, but the government may impose restrictions if you are infringing on the rights or safety of others.

Where, when, and how can I protest?

Can the government restrict where, when, and how protests may take place?

Yes. The government may impose reasonable restrictions on the time, place and manner of speech, but these restrictions cannot be based on the *content* of the speech. For example, speech may be restricted if it is exceedingly loud in a residential area at 2am. On the other hand, the government may not disallow a protest because it has an anti-war message. Speech at certain “sensitive areas,” such as health care facilities, abortion clinics, military bases, and airport terminals, may also be subject to reasonable time, place, and manner restrictions. For example, near health care facilities, there can be rules about not blocking entrances and not making too much noise.

Can protesters march in the street?

Yes, but... many cities require permits if a march will block traffic; the rules for obtaining permits and enforcement of permit requirements vary by jurisdiction. If you march without a permit and block traffic while refusing an order from police to get out of the street, you could be arrested or detained. If you intentionally block traffic as an act of civil disobedience, you could face criminal charges.

Do I need to get a permit for my protest?

It depends. The government is not allowed to require permits for protesting, leafletting, or signature-gathering on public sidewalks when these activities don’t hinder traffic, create a risk to public safety, or compete with others’ uses beyond the ordinary use of the space.¹ You should check your local ordinances for specific requirements if you are planning a large event that will block vehicle or pedestrian traffic. If a permit is required, the rules for obtaining a permit must be laid out in advance and cannot be different based on the content of the speech or the focus of the protest.

¹ See *Forsyth County, Ga. v. Nat’list Movement*, 505 U.S. 123, 130 (1992); *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1039, 1040-43 (9th Cir. 2006); *American-Arab Anti-Discrimination Committee v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005).

Is there an exception to the permit requirement for “breaking news”?

Yes. The courts have recognized an exception to permit ordinances for “breaking news.” In a situation where breaking news causes activists to protest in response, the rules for permits (such as requiring application for a permit a certain number of days prior to the protest) may not apply.

Can the government charge me money for a permit?

Yes. The government may impose a nominal permit fee to cover administrative expenses of processing a permit application and/or expenses related to the event. Fees must not be based on the content of the speech, and permit schemes must not rely too heavily on the discretion of officials to determine fee amounts.

Can the government require me to purchase insurance to protest or march?

Maybe. The courts have invalidated laws that require obtaining insurance or paying indemnification as a condition of obtaining the permit when the amount of insurance demanded is not narrowly tailored, not content neutral, or leaves too much discretion to government officials. If you believe the government is placing too great of a burden on your right to free expression through unreasonable enforcement of a permit ordinance (e.g., unreasonable delay, cost, or restrictions), contact the ACLU.

Are there noise restrictions which apply to a protest march?

There could be. Check your local ordinances. For the most part, the government cannot ban all noise-amplifying devices, but there may be reasonable time, place, and manner limits which apply to the volume of your free speech. For example, the government may restrict the use of loudspeakers during night hours when people expect quiet, but use of drums or amplification equipment would not be a problem during the day and in a location where there is already a lot of noise.

Are there special rules when protesting on government property?

Yes. Different kinds of government property are treated differently. Free speech rights are the greatest in government-owned properties that are traditionally open to public expression and assembly such as sidewalks, streets, and parks. In other locations, such as inside government buildings or on government property where there is a significant security concern (like a military base), the government can limit or even ban speech and protest rights.

Government buildings: Free speech activities may ordinarily take place on sidewalks outside of government buildings or on some public plazas, but not all. Other areas in and around the building (including sidewalks on government property) may be off-limits or may require a permit.

Military bases: The Supreme Court has ruled that no one has a right to protest on military bases even if the person is a member of the military. However, protests may be permissible in public spaces, such as the sidewalk, if they are outside a military base.

Schools: Picketing or leafleting near school grounds (for example, on the public sidewalk in front of the school) is constitutionally protected, but administrators may restrict access to public school property during school hours to ensure safety.

City Council Meetings: Protesters may be ejected from city council meetings for speech that actually disrupts or impedes the meeting but not simply for saying or expressing something that

is offensive.² Silent motions or quiet speech that do not actually impede the meeting are not grounds for ejection.³

State Parks: State parks may require reservations or permits for large demonstrations, or for use of sound equipment. Apply for a permit from the parks agency well in advance of the event.

Does my First Amendment right to protest extend to private property?

Not usually. Private landowners have historically had the right to prevent anyone from speaking or demonstrating on their property. A person refusing to leave after being asked to do so could be prosecuted for trespassing. There are special rules that apply to initiative petition signature-gathering at shopping malls and other stores; see the separate Guide on this topic.

What can I do or not do while protesting?

Can I burn the American flag?

Yes. The Supreme Court holds that burning the American flag is a constitutionally protected form of expression.

Are there limits to what I can say while protesting?

Are there some kinds of speech that are not constitutionally protected?

Yes, but...only a few narrowly defined categories of speech are considered outside the protections of the First Amendment and the state constitution's free speech protections. Generally, the Constitution protects everyone's right to express their views, even if those views are very unpopular. However, the law considers the following types of speech unprotected: true threats, incitement to riot, and defamation. There are many court cases debating how to define those terms, and the legal definition changes over time.

True threats: communicate an intention to inflict imminent bodily harm against another person, where a reasonable person would believe the threat was likely to be actually carried out.

Incitement: encouraging immediate acts of violence under circumstances where the encouragement goes beyond strong rhetoric and is intended to actually cause a riot or violence, and is actually likely to cause serious harm through a riot or violence. For example, when at an anti-war protest discussing police brutality a speaker facing being drafted into the military said "If they ever make me carry a rifle the first man I want to get in my sights is [President] L.B.J.," the Court said that was protected "political hyperbole" and not a "true threat" or criminal "incitement." On the other hand, if a speaker demanded that members of a crowd holding burning torches start burning down buildings full of people, that might constitute incitement.

Defamation: a false statement about a private individual made with actual malice that harms the other person's reputation; not generally a crime, but the person harmed can file a civil lawsuit seeking damages. False political speech is constitutionally protected because the courts have found that the government cannot police truth and falsity in political debate. For example, when a candidate for public office falsely described her opponent's vote on a particular issue, a

² *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010); see also RCW 42.30.050.

³ See *id.* See also *Fitzgerald v. County of Orange*, 570 Fed.Appx. 653 (9th Cir. 2014); *White v. City of Norwalk*, 900 F.2d 1421 (9th Cir. 1990).

court ruling found that to be protected speech. There are also a few other categories of speech that constitute a crime (for example, false statements under oath which constitute the crime of perjury), but those kinds of speech are unlikely to arise in a protest situation.

What if others react violently to what I say?

You are not legally responsible. The speaker is not responsible for the presence of hecklers or angry listeners; their hostile actions do not make the speaker's speech illegal. The presence of hecklers or counter-demonstrators is not, by itself, enough to justify an order to disperse the crowd or arrest the speakers. The government also may not increase permitting costs based on the expectation that counter-demonstrators will be present.

How should I interact with police while protesting?

Can I criticize the police?

Yes. The First Amendment grants individuals the freedom to verbally criticize police actions. Courts have upheld this constitutional protection in many circumstances, and for many different offensive words and statements.⁴ Even when words directed at police may be “disrespectful, discourteous, and annoying, they are nonetheless constitutionally protected.”⁵

Can I film the police on my cell phone or with a camera?

Yes. Washington state and federal courts have upheld the right to record or observe the police performing their official duties in public, so long as the conduct does not interfere with police doing their job. Individuals should keep a reasonable distance from police and take care to not actually interfere with police activities while recording.

Can the police ever break up a demonstration?

Sometimes. The police are charged with safeguarding the public during a demonstration, but they are also required to protect free speech rights. The police may not break up a gathering unless there is a clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety.⁶ If the police issue an order to disperse, you must obey it or face the possibility of arrest.

Can I be arrested during a protest?

It's possible. Even if you view your activity as lawful, there's a chance that the police will regard it as breaking a law. Remember, if you disobey an order you believe is unconstitutional, you may still be arrested and charged (even if the officer is wrong). So, whether you're planning to engage in civil disobedience or not, you may want to be prepared with information about your rights if you're arrested (see below). Washington laws that are most often used against demonstrators include:

⁴ See the following for specific language spoken to police officers upheld as protected by courts: *Buffkins v. City of Omaha*, 922 F.2d 465 (8th Cir. 1990) (“asshole”); *Marttila v. City of Lynchburg*, 33 Va. App. 592, 535 S.E.2d 693 (2000) (“fucking pigs” and “fucking jokes” with donut reference); *Swartz v. Insogna*, 704 F.3d 105 (2d Cir. 2013) (the middle finger); *State v. E.J.J.*, No. 88694-6, 2015 WL 3915760 (Wash. June 25, 2015) (“motherfucker”).

⁵ *State v. E.J.J.*, No. 88694-6, 2015 WL 3915760 (Wash. June 25, 2015).

⁶ *Collins v. Jordan*, 110 F.3d 1363, 1367 (9th Cir. 1996); *Papineau v. Parmley*, 465 F.3d 46, 56-57 (2d Cir. 2006) (internal quotations omitted).

- Disorderly Conduct (RCW 9A.84.030, and local ordinances)
- Failure to Disperse (RCW 9A.84.020)
- Obstruction (RCW 9A.40.020)
- Pedestrian Interference (RCW 46.61.250, and local ordinances)
- Resisting Arrest (RCW 9A.76.040)
- Trespass (RCW 9A.52.070; RCW 9A.52.080)
- Disturbing school, school activities, or meetings (RCW 28A.87.060)

Even if the charges are dropped, you will still have gone through the hassle of being detained, and the arrest will remain on your criminal record. Alert the ACLU if you believe an official order has unconstitutionally restricted your right to protest or if you have been arrested in violation of your civil liberties.

What if my protest is planning civil disobedience?

If you are planning an act of civil disobedience (i.e, violating the law), keep in mind that you may be arrested for that act. Prepare accordingly and plan ahead. The National Lawyers Guild may be able to provide legal observers and volunteer attorneys. Be sure to consult the ACLU-WA's "What To Do If You're Stopped by the Police" and remember:

- *You have the right to remain silent. Use it. You must give your name and address but don't say anything else.*
- *You have the right to legal counsel. Ask for an attorney. Don't discuss your case with the police without consulting your attorney.*
- *You have the right to go into court and see a judge the next court day after you have been detained. Assert this right. Some arrested persons may be released before this time, with or without bail.*