



Questions and Answers on the Right to Protest

Note: The following is a description of the current state of First Amendment law. It does not necessarily represent a version of what the ACLU would like to the law to be.

Q: We want to protest on government property. Don't we have a First Amendment right to do so? Doesn't government property belong to the people?

A: Government can narrowly regulate protests, even when the protests are on government property. Although public streets and parks have long been recognized as "traditional public forums" that are typically available for First Amendment activities, courts have held that the government may impose reasonable restrictions on the time, place and manner of protected speech in those locations, provided that the restrictions are content neutral, narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication. Statutes, city ordinances and local regulations that require permits for the use of public property have been routinely upheld by the courts, as long as the regulations meet this test.

The right to protest on other government property depends upon the nature of the property and the uses that the government has allowed on that property. For example, the government may restrict access to an office building or parking lot and may regulate the use of its outdoor space.

The First Amendment's protection of free speech and assembly is not absolute and it does not provide protection for breaking laws that have been enacted for purposes other than the regulation of speech. Thus, while the First Amendment applies to the government's conduct, the Supreme Court has held that government need not permit all forms of speech on all property owned and controlled by the government.



Q: Why do we need a permit to hold a protest in our public park? Isn't a permit requirement a restriction of First Amendment rights?

A: While parks are generally available for First Amendment activities, courts have held that the government may impose reasonable restrictions on the time, place and manner of protected speech in those locations, provided that the restrictions are content neutral, narrowly tailored to serve a significant government interest, and that they leave open ample alternative channels for communication. Statutes and local regulations that require permits for the use of public property have been routinely upheld by the courts, as long as the regulations meet this test. A permit is not always required. You should check with the local police department to determine whether, and under what conditions, a permit is necessary.



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Q: Why should we bother applying for a permit if we believe that it will be rejected by the city?

A: If the government requires a permit for the use of a particular park or for an area that requires blocking off of sidewalks or streets in order to accommodate your protest, we recommend that you apply for the permit before engaging in the protest. Once you apply for a permit, the burden shifts to the government to either grant the application as requested, or explain why the request is denied and offer alternative times or places, for your event. If the request is denied, you will have a record that a court can review, should you seek judicial relief.

Q: We want to protest around the clock in the city's downtown park but the police say that the park is closed from 10 p.m. to 8 a.m. Doesn't the First Amendment give us a right to peacefully protest in the park during those hours?



A: Not necessarily. Almost 30 years ago protesters in Washington, D.C. sought to symbolically protest the plight of the homeless by camping out on the National Mall, contrary to a National Park Service regulation. The protesters went to court seeking to enjoin the regulation that was being used to block their vigil. In response, the Park Service argued to the federal district court that it had a "substantial interest in maintaining the parks in the heart of our Capital in an attractive and intact condition, readily available to the millions of people who wish to see and enjoy

them by their presence". In *Clark v. Community for Creative Non-Violence*, the Supreme Court found that the government's stated substantial interests, along with the fact that the Park Service identified other locations that allowed overnight camping, justified upholding the government's regulation as a reasonable content-neutral time, place, manner restriction on the use of this most public forum.

As long as the government consistently and uniformly applies the posted hours, such regulation will likely be upheld by the courts.

Q: We believe that "occupying" government property is "expressive conduct" that should be protected under the First Amendment? Does the ACLU have any suggestions as to how we can successfully require that our city or county accommodate this form of protest on public property?

A: Many courts start their analysis with the assumption that symbolic activities (such as sleeping, occupying, feeding the homeless, etc.) are subject to protection under the First Amendment. For



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example, a federal district court judge in Fort Myers recently found that sleeping and camping activities of an “Occupy” group in a city park are “symbolic conduct” protected by the First Amendment. However, the court upheld the City’s 6:00 a.m. to 10:30 p.m. park hours while striking a provision that allowed the recreation manager to vary the hours for athletic sports events, cultural or civic activities. Under those restrictions, the Occupy group had a First Amendment right to be in the park when it was open but could not stay in the park during its closed hours.

Q: The police have arrested and charged us with criminal trespass charges because we didn’t leave the city park when it was closed. How can we be charged with trespass on public property? Doesn’t the First Amendment provide us with a defense to these criminal charges?

A: No. Contrary to popular belief, you can be charged with trespassing on private and public property. The First Amendment does not provide protection for breaking laws that have been enacted for purposes other than the suppression of speech (e.g. public safety). Thus, a nighttime protest rally, or camping, that occurs in a city or county park that is not open to the public at night does not insulate protestors from being arrested and prosecuted for trespassing.

Q: They are telling us to remove our tents and sleeping bags from the lawn in front of City Hall. Being on this space is an integral part of our protest. This is public property. Doesn’t the First Amendment give us the right to do that?

A: Not necessarily. As discussed above, the government has the right to place reasonable, content-neutral time, place and manner restrictions on the First Amendment rights of protesters at these public spaces – even at City Hall. What the government cannot do is to allow some protesters to use a public space and then deny another group the same use because it disagrees with the message.

Q: What about the public sidewalks? Are there restrictions on First Amendment rights pertaining to sidewalks? Can we sleep on the sidewalks?

A: Like public parks and streets, most public sidewalks are recognized as traditional public forums; however, they are also subject to the same “time, place, manner” restrictions discussed above. For example, a local ordinance can reasonably demand that no-one block the sidewalk (such as with tables for literature). However, the government cannot prevent protesters from marching in small single file lines as long as the protesters do not obstruct the sidewalk, or otherwise disrupt pedestrians. It is not yet legally settled whether sleeping on public property (including on sidewalks) is a constitutionally protected form of speech; it is clear that sleeping in a manner that blocks the sidewalks may be prohibited by the local government.



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Q: Some members of our group have been harassed by the police for taking photos and videos of the officers while they are making arrests. Do we have a First Amendment right to document their actions?

A: Yes. When in public spaces where you are lawfully present you have the right to photograph or video anything that is in plain view, including the police. Such photography is a form of public oversight of the government and is important in a free society. You must be careful to avoid getting in the officer's space or face, or otherwise interfering with the officer's duties, as those actions can get you arrested on other charges. Moreover, police officers may not generally confiscate or demand to view your camera, photographs or video without a warrant.

But, you should also be aware that there is a state statute against audio recording of conversations without the consent of all parties. This provision has been used by some police officers to arrest individuals who are video and audio taping at the same time. While the ACLU believes that such use of the statute is unconstitutional, we have not yet been able to establish that legal principle. Our recommendation is that if you are videotaping and a police officer asks you to turn off the audio, you should do so.

For further information, see "Photographers: Know Your Rights" which can be found on the ACLU of Florida website at www.aclufl.org/Photographer

Q. What rights do we have if we refuse to abide by rules involving park hours or where we can pitch a tent? Will the ACLU of Florida represent demonstrators who are arrested for using the park when it is closed?

A: There is a long, rich history of civil disobedience in the United States. But civil disobedience is the intentional violation of the law in order to demonstrate the depth of the conviction of the person engaged in the disobedience or to create a legal test of the constitutionality of an untested rule or law. The First Amendment offers no protection for civil disobedience and those who engage in it should be prepared to accept the consequences – as has been the long tradition of civil disobedience. And in that event, the ACLU of Florida does not offer representation to those arrested for the intentional violation of laws or rules that have been determined by the courts to be constitutional.

Q. Which issues involving the protest groups would trigger the interest or involvement of the ACLU?



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A: The ACLU of Florida will challenge a law that is enacted or enforced for the purpose of suppressing certain speech. For example, the ACLU of Florida successfully challenged a state statute that made it a criminal offense to distribute anonymous flyers criticizing public officials. Similarly, we have challenged restrictions that are applied to one group but not to other groups, based upon the content of the message that was conveyed.



We also would be concerned about the constitutionality of certain permit requirements. For example, it would be a violation of the First Amendment for a municipality to charge protestors for the cost of police officers assigned to the protest area or to require expensive (or hard to get) liability insurance coverage as a condition for the issuance of a permit. Similarly, requiring a permit for a very small number of protestors (including for an individual), a long advance application process, or other onerous requirements may raise First Amendment concerns.

Q: The underlying message of the Occupy movement is about economic inequality in America. Doesn't the ACLU of Florida support this message and the Occupy movement?

A: The American Civil Liberties Union of Florida is freedom's watchdog, working daily to defend individual rights and personal freedoms guaranteed by the Constitution and the Bill of Rights. While the ACLU of Florida supports the rights of all protestors to engage in First Amendment protected activities, it takes no position on the underlying message of any specific group – including the Occupy movement's messages