

## RESTRICTIONS

### *What the government can't regulate:*

The government generally can't regulate or restrict speech based on its **content**. Regulation of speech must be unrelated to both the **ideas** and the **views** expressed.<sup>1</sup>

Restrictions based on the **ideas** or **subject matter** involve regulating an entire topic of speech. For example, a local ordinance prohibiting all picketing except for labor picketing connected to a place of employment is unconstitutional because it regulates speech based on whether it is about labor.<sup>2</sup>

Restrictions based on **viewpoint** affect only one perspective within a larger subject. For example, a public university may not deny funds to a student publication specifically because it holds a Christian viewpoint, while exempting other religious publications from these same restrictions.<sup>3</sup>

Some content-based restrictions may be allowed if they are **narrowly tailored** to serve a **compelling** government interest and are the **least restrictive** way of achieving that interest.<sup>4</sup>

### *What the government can regulate:*

Some categories of speech are considered outside of First Amendment protection: **obscenity**; **defamatory language** that is false and is intended to harm the reputation of another person; and **"fighting words,"** or speech that **incites imminent lawless action**.

For speech outside of these categories, generally the government can place **"time, place, and manner" restrictions** on speech. This kind of restriction does not depend on the subject of the speech, but on the **way** it is expressed, and is often created to preserve public order, such as preventing parades from clashing with rush-hour traffic.

These regulations must be **narrowly tailored** to serve a **significant** government interest, must be **content neutral**, and must leave open ample **alternative channels** of communication.<sup>5</sup>

## LAWS

The right to protest is protected by both the U.S. Constitution and the Texas Constitution.

The **First Amendment** of the U.S. Constitution states that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble."<sup>15</sup>

The **Texas Constitution**, in Article I, sections 8 and 27 protects the "liberty to speak, write or publish ... opinions on any subject," and "the right ... to assemble."<sup>16</sup>

## YOUR RIGHTS IN GENERAL

These provisions protect your right to march, leaflet, parade, picket, circulate petitions and ask for signatures, and other forms of peaceful protest. You have the right to express your views in these ways regardless of how unpopular or controversial they may be. Although these rights are afforded strong protection, how the rights are exercised may be regulated.

## IF YOUR RIGHTS ARE BEING VIOLATED

If you believe that you are being denied your right to protest, contact the ACLU of Texas. Visit our website at <http://www.aclutx.org/> and click "Request Legal Assistance" to submit a complaint.

## RESOURCES

For more information:  
[www.aclu.org/free-speech/right-protest](http://www.aclu.org/free-speech/right-protest)  
[www.firstamendmentcenter.org/](http://www.firstamendmentcenter.org/)

## CONTACT US

**ACLU Foundation of Texas**  
P.O. Box 8306, Houston, TX 77288  
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[www.ACLUTX.org](http://www.ACLUTX.org)

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# FREE SPEECH AND THE RIGHT TO PROTEST



## THE RIGHT TO PROTEST

The right to protest is a long-standing protection afforded by the U.S. and Texas constitutions. This right is contained both in the freedom of speech and in the freedom to assemble, which protect not only the ability to verbalize protests and engage in symbolic speech such as wearing an armband, but to arrange peaceful marches and protests on certain public lands.

These rights are **not** unconditional. Because the government has an interest in maintaining peace and public order, it may restrict some protest activities in certain ways.

This *Know Your Rights* fact sheet is intended for people who want to exercise their right to protest in order to help understand the status of the current law on this topic. However, this sheet does not cover every nuance of the law surrounding protest rights and **should not be taken as legal advice**. If you have specific legal questions, consult an attorney or the ACLU of Texas.

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## IF YOU ARE APPROACHED BY LAW ENFORCEMENT

Be conscientious about your actions. Don't argue: Anything you say or do can be used against you. Arguing or fighting may give police an excuse to arrest you.

### *On Foot:*

If you are stopped while you are on foot and have not been detained, you are not required to answer officers' questions.

### *Searches:*

The police may pat down your clothing if they suspect that you are concealing a weapon. Don't resist or touch the officer, but make it clear that you don't consent to any further searches.

### *Being Detained:*

If the police detain you, you may be required to provide your name. Ask if you are under arrest. If so, ask to see a lawyer. If not, ask if you are free to leave.

### *Police Complaints:*

If you think the police have acted outside their authority, don't protest or resist on the scene. Write down officers' names, badge numbers, and patrol car numbers. File a written complaint with the police and the ACLU.

## Q&A

### ***Where can I protest?***

The constitutional protection offered to protest varies on the location, or forum, of the protest. Courts have broken public lands down into different categories:

#### *Public streets, sidewalks, and parks:*

These public areas have been devoted by a long tradition to assembly and debate.<sup>6</sup> Here, governmental regulation of speech is very limited.<sup>7</sup>

#### *Areas specifically opened for speech:*

These locations are not traditionally open for speech, but the government has specifically designated them for some public discourse. Examples include public universities, public schools and public meetings. These areas generally have an intermediate level of protection from regulation, although sometimes they receive the highest protection, like the first category.<sup>8</sup>

#### *'Private' government property:*

This includes all other public property that has not historically been a place of public expression and has not specifically been designated one, such as cityowned property leased to a private group. Although technically public property, it does not qualify as a public forum.<sup>9</sup> Government may restrict speech there so long as the restrictions are reasonable and not viewpoint-based.<sup>10</sup>

### ***Can I protest on private property?***

No. With limited exceptions, First Amendment rights apply only to the government and government property. Private property owners can control what happens on their property and may prevent people from protesting on their land. However, adjoining public property, such as streets and sidewalks, may provide an appropriate alternate venue.

### ***Can I be prevented from protesting if my views are controversial?***

No. Restrictions on speech must generally be unrelated to the content of the speech and may not be viewpointbased. Even if your views are unpopular, controversial, or critical of the government, you still have the right to express them through speech and assembly.

### ***Do I need to get a permit?***

You might. Because of concerns like obstruction of traffic and maintenance of public order, many localities require a permit to hold a parade or a march. Check with your local government.

### ***How far in advance should I apply for a permit?***

Courts have approved requirements that a permit be requested a certain number of days before the event. However, the requirement is limited to a few days, and the deadlines must not be so unreasonable so as to burden your rights. In one case, a court held that a 10-day requirement placed a burden on expression.<sup>11</sup>

### ***Can I be charged for the permit?***

Yes. It is permissible to charge fees for the permit application, but the fees may not be arbitrary and may not be imposed in order to discourage applications. The fees must only cover the administrative expenses associated with the application and permit.<sup>12</sup>

### ***For what reasons can my permit be denied?***

The deciding body must not have complete discretion to deny a permit. There must be concrete standards regulating the review of an application.<sup>13</sup> The standards must be narrow, objective, and definite.<sup>14</sup>

### ***Are there different regulations for non-citizens?***

The Patriot Act significantly altered First Amendment rights for non-citizens. Section 215 allows surveillance and investigation of people based on their First Amendment activities. Non-citizens who are not permanent residents are subject to harsher penalties if their actions are labeled "domestic terrorism." Immigrants who engage in protest should be aware of law enforcement's increased authority and prepare accordingly.

1 Horton v. City of Houston, 179 F.3d 188, 193 (5th Cir. 1999).

2 Carey v. Brown, 447 U.S. 455, 468-471 (1980).

3 Rosenberger v. Univ. of Va., 515 U.S. 819, 831 (1995).

4 R.A.V. v. City of St. Paul, 505 U.S. 377, 395 (1992).

5 Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983).

6 Id.

7 Id.

8 Justice for All v. Faulkner, 410 F.3d 760, 765-66 (5th Cir. 2001).

9 Int'l Soc'y for Krishna Consciousness v. Schrader, 461 F.Supp. 714, 716-19 (N.D. Tex. 1978).

10 Ark. Educ. TV Comm'n v. Forbes, 523 U.S. 666, 677-678 (1998).

11 SEIU v. City of Houston, 542 F. Supp. 2d 617, 650-51 (S.D. Tex. 2008), rev'd on other grounds, 595 F.3d 588 (5th Cir. 2010).

12 Forsyth Cnty. v. Nationalist Movement, 505 U.S. 123, 130-134 (1992).

13 Lakewood v. Plain Dealer, 486 U.S. 750, 757-758 (1988).

14 SEIU, 595 F.3d at 596.

15 U.S. CONST. amend. I.

16 TEX. CONST. art. 1, §§ 8, 27.