

## ACLU – YOUR RIGHT TO PROTEST

The First Amendment of the United States Constitution (part of the Bill of Rights) and the Georgia Constitution protect the right of all voices to be heard as well as the right of the people to gather peacefully and ask their government to address their concerns.

Our courts have said that the government can set rules regulating these activities if they are even-handed and necessary to protect public safety or to prevent major conflict in the community. This handout is a brief guide to free speech and protest rights, but it cannot answer all the questions you might have. Contact the appropriate government agency for rules regarding permits and the use of public property, and be sure to read the sections below on Permits. If you feel that your rights to free speech or to protest have been violated, please call the ACLU of Georgia at 404-523-5398. You can also reach us by fax at 404-577-0181 or via e-mail at [INFO@ACLUGA.ORG](mailto:INFO@ACLUGA.ORG).

### GENERAL GUIDELINES

**Q** *What speech activities are protected by the First Amendment?*

**A** Making speeches, handing out leaflets, holding or attending rallies, carrying posters and demonstrating.

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

**A** 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 non-discriminatory and narrowly drawn “time, place and manner” restrictions on the exercise of First Amendment rights.

**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 convicted for incitement only if he or she specifically advocates illegal actions and only if such illegal conduct is likely to imminently 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** *What other types of free speech activity are constitutionally protected?*

**A** 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.

**Q** *Where can we pass out leaflets or hold a rally, march or demonstration?*

**A** Generally, in any public forum (see next question). 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.

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**Q** *What is a “public forum?”*

**A** 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 areas of bus and airport terminals, public auditoriums, fairgrounds, plazas, stadiums, parks, courts and legislative buildings. 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.

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

**A** 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 – see previous question.

**Public schools (secondary and below):** The government can prohibit protest activities by non-students 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.

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

**Q** *What about private property?*

**A** 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 prior to engaging in free speech activities at those locations.

### PERMITS

**Q** *Do we need to get a permit?*

**A** In some locations, groups will need to obtain a permit before holding rallies or demonstrations. 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.

Check with local government agencies to see if you need a permit, or look for the regulations online. ([WWW.MUNICODE.COM](http://WWW.MUNICODE.COM) has a good collection of municipal and county codes – click ONLINE LIBRARY then the map of Georgia.) If you have trouble getting a permit, call us at 404-523-5398.

**Q** *What about marches?*

**A** 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.

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**Q** *Can the size or type of signs or how they are carried be restricted?*

**A** Yes. In most municipalities, signs or posters may not be attached to lampposts or utility poles. Police officers may sometimes fear or claim that the stakes or dowels used to carry signs might be used as weapons. Therefore, it is advisable to use cardboard tubing or very thin wood for carrying signs.

## POLICE CONFRONTATIONS

**Q** *What should I do if confronted by a police officer?*

**A** First, don't argue! Be courteous and ask to talk to the officer in charge. Explain that you are not disrupting anyone else's activities and that your activity is protected by the First Amendment. Record the badge number and name of the officer. If you do not obey the officer, you can be arrested and removed from the scene; you will not be convicted if a court later determines that your First Amendment rights were violated. If you are arrested under these circumstances, call us at 404-523-5398.

## POLICE DO'S AND DON'TS

### **DON'T:**

- Get smart with the police or use bad language.
- Have your hands where the police cannot see them.
- Stop your vehicle in an area where no one else is around.
- Make any sudden moves.
- Tell the police that you know they are wrong.
- Touch a police officer.
- Give the police control of your emotions.
- Run from the police.
- Interfere with the police.
- Agree to a search of your car or home.

### **DO:**

- Remember badge numbers and names.
- Keep cool and collected.
- Know your rights.
- Be quiet and do what they tell you.
- Go peacefully.
- Control your body language.
- Keep your hands on the steering wheel if you are in a vehicle.
- Give requested information such as name and identification.
- Address the officer respectfully.
- Make a complaint about any police misconduct.
- Ask for a lawyer if you are questioned by the police.



## Your Right to Protest A Brief Guide

American Civil Liberties Union of Georgia  
and  
ACLU Foundation of Georgia