

Roads, Risks & Roadblocks

1st Amendment Considerations



These educational materials do not constitute legal advice. Contact a local attorney for additional questions.



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The 1st Amendment protects freedom of speech, which includes protests and demonstrations. However, even if the 1st Amendment applies, law enforcement can arrest and press charges.

Knowing the law might protect you later in the courts. Put yourself in the best position before going protesting!

Charges can take a long time to resolve.
We got each other's backs and keep each other safe.

The 1st Amendment won't save us on the streets, but it could help in courts!

Bad Bills Targeting Road Conduct Are Expanding

Since 2017, six states have adopted laws creating **new penalties for protesters who block traffic**, including Iowa in 2021 and Florida in 2021 (currently blocked).

Four states have adopted new laws **restricting protests on government property**, including Tennessee in 2020 and Mississippi in 2023.

State and congressional lawmakers are currently considering at least 15 bills that **would restrict street protests**.

Cities are also considering ordinances to restrict and punish protests in roads and sidewalks. Miami Beach passed such an ordinance in March 2024.

For more: <https://www.icnl.org/usprotestlawtracker/>

1st Amendment: Protects Speech and Expressive Conduct

What is protected? Statements, banners, chants, any conduct that relays a message.

When can I bring up my 1st Amendment rights?

- In courts, not in the streets!
- Affirmative litigation: Lawsuits, injunctions
- Defensive litigation: Defenses, motions

The state **CAN** restrict speech, with limitations under the 1st Amendment.

- Different states and cities have different laws and ordinances.
- In schools, there might be additional rules and codes of conduct.

Beware: “1st Amendment-protected activities” might be repressed anyways. There is no guarantee that law enforcement will not violate your rights! These resources exist *because* of this reality.

In Public Forums, the 1st Amendment Should Have the Strongest Protections

Speech is most protected in public forums:

Public streets, sidewalks, parks, public forests, traditional soap box locations.

- Includes public parking lots and public pedestrian accesses, may include commercial areas.
- There are many gray areas: Be cautious!

Under the 1st Amendment, the state CAN impose reasonable time, place, and manner restrictions on speech as long as:

- (1) Content-neutral,
- (2) Narrowly tailored to serve a significant governmental interest, AND
- (3) Leaves open ample, sufficient, alternative channels of communication.

Standardized permit requirements are usually reasonable restrictions to speech, and the state can enforce them. But unreasonable or targeted denials in public forums might violate the 1st Amendment!

Beware: Since 9/11, courts and governments have shrunk what they consider "public forum."

Streets and Roads: State Can Regulate and Control Access

The state can and will regulate traffic and control access in streets and roads, even if they are public forums.

The state can and will limit activity if it interferes with lawful use of road or if it is considered unlawful.

- The state can enforce: Buffer zones, unloading zones, neutral no-protest zones.

Conduct on the Roads: Risks Under 1st Amendment

Protesters **may** be able to use off-road ditches and non-interfering tactics to relay messages, but the state could still repress.

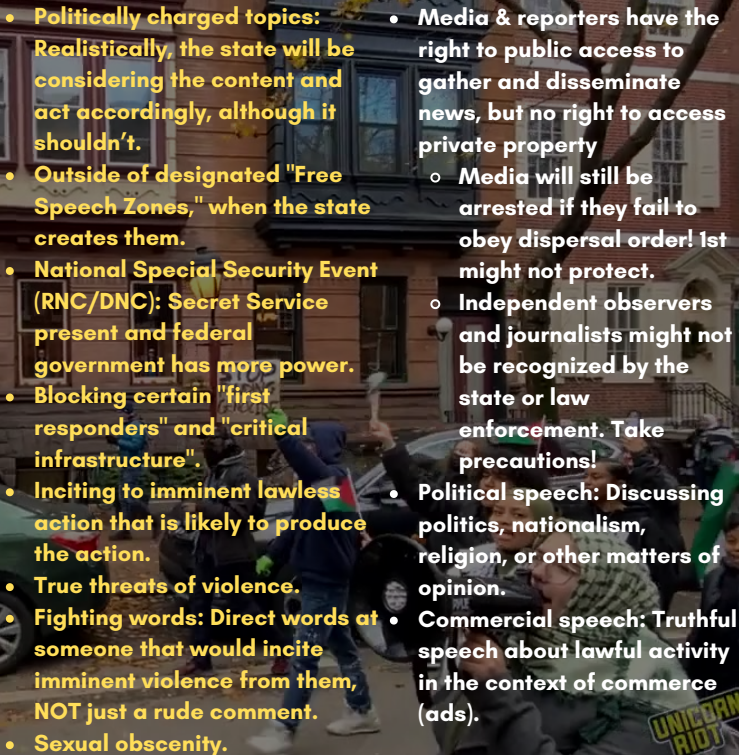
- **Is it affecting public safety, peace, order? Is public right-of-way blocked?**
 - If no to both, the 1st Amendment might protect in courts!
- **Is entry into the road brief? Are individuals quickly complying with dispersal orders?**
 - If yes to both, 1st Amendment might protect in courts!

If people block any public right-of-way, the state may be able to disperse and repress.

- **Are people still able to get through? Can business be conducted as usual?**
 - If yes to both, the 1st might protect in courts!

Speech with Less or No Protections under 1st Amendment

Speech that Could Get More Protections

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- **Politically charged topics:** Realistically, the state will be considering the content and act accordingly, although it shouldn't.
 - **Outside of designated "Free Speech Zones,"** when the state creates them.
 - **National Special Security Event (RNC/DNC):** Secret Service present and federal government has more power.
 - **Blocking certain "first responders" and "critical infrastructure".**
 - **Inciting to imminent lawless action that is likely to produce the action.**
 - **True threats of violence.**
 - **Fighting words: Direct words at someone that would incite imminent violence from them, NOT just a rude comment.**
 - **Sexual obscenity.**
 - **Media & reporters have the right to public access to gather and disseminate news, but no right to access private property**
 - Media will still be arrested if they fail to obey dispersal order! 1st might not protect.
 - Independent observers and journalists might not be recognized by the state or law enforcement. Take precautions!
 - **Political speech:** Discussing politics, nationalism, religion, or other matters of opinion.
 - **Commercial speech:** Truthful speech about lawful activity in the context of commerce (ads).

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Risk Assessment under 1st Amendment: Know Your Territory and People!



The more people that are protesting or showing up, the more they get targeted. To prepare, understand the relevant laws and possible consequences related to conduct in roads:

- Consider that some populations might never get or apply for permits (especially Black, brown, Native folks).
- No two places are the same: Roads in Upstate NY versus tunnels in Los Angeles versus streets in Eastern TN versus sidewalks in Chicago.
- **Consult your state laws and city ordinances:**
 - Place to start: <https://www.icnl.org/usprotestlawtracker/>
 - State laws: <https://law.justia.com>
 - Many ordinances: <https://library.municode.com/>

Consider other effects of criminal charges: Employment, housing, background checks, convictions that can't be expunged, immigration consequences.

Have a plan if there's an arrest.

- **Establish people outside who will take care of things for you: Work? Dependents? Cars? Bills? Medication? Animals?**
- **Establish a relationship with an attorney who will respect your political values and priorities.**

Remember: Police can do what they want and "rights" only come in during court hearings!

- **Knowing and asserting your 1st Amendment rights can put you in the best position should an arrest occur.**

Stay engaged with cases and court! Offer to help looking through evidence, hearings, reports.

Prepare When You Protest! Assert the 1st Amendment!



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Questions? Find or start a local NLG chapter:

<https://www.nlg.org/chapters/>