



Legislative Affairs
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2025 Memorandum

Subject: Protect Protest

Trump’s antipathy toward peaceful political protesters—at least those who don’t support him—is hardly a secret. He’s called for their imprisonment,¹ suggested they be beaten,² and allegedly implored the military to use force against them, even once telling the chairman of the joint chiefs to “just shoot them.”³ New York lawmakers preparing for a second Trump administration must be ready to respond to similar calls for police brutality, counterprotester violence, and military crackdown, with a forceful, principled defense of peaceful political assembly.

During the mass demonstrations of the first Trump administration, New Yorkers and people across the country witnessed and experienced widespread abuse at the hands of law enforcement, who—facing few statutory restraints on their tactics with respect to the policing of protests—often responded with an aggressive and heavily militarized response, leading to needless arrests, the use of excessive force, and creating a climate of fear and intimidation for those wishing to engage in core First Amendment activity.

As we contend with a second Trump administration and the likelihood of mass protest to challenge the implementation of many of his most outrageous campaign promises, such as the mass deportation of immigrants, it is imperative that state legislators shore up basic First Amendment guarantees by codifying affirmative protections for protesters. In 2020, during and in the wake of the George Floyd protests, state lawmakers responded to police brutality against nonviolent demonstrators by introducing a number of bills to do just that. Unfortunately, almost none of those measures were enacted.

As we prepare for the resumption of mass demonstrations, lawmakers must be proactive and quickly introduce and enact legislation that will make New York a state in which our

¹ In just one example from dozens, Trump stated on Fox News that flag-burners should get a year in jail. Daily Caller, X, Jul. 25, 2024 9:07 AM, <https://x.com/DailyCaller/status/1816460388759740655>. He has also “repeatedly indicated that he would use federal law enforcement as part of a campaign to exact ‘retribution.’” Tom Dreisbach, *Trump has made more than 100 threats to prosecute or punish perceived enemies*, NPR, Oct. 22, 2024, <https://www.npr.org/2024/10/21/nx-s1-5134924/trump-election-2024-kamala-harris-elizabeth-cheney-threat-civil-liberties>.

² *Trump suggests a protester may get ‘the hell knocked out of her’ by her parents*, AP, Oct. 13, 2024, <https://apnews.com/article/trump-election-protester-violence-california-d7d68895390b6b289d146b7377bc1c18>.

³ Martin Pengelly, *Trump told top US general to ‘just shoot’ racism protesters, book claims*, THE GUARDIAN, Jun. 25, 2021, <https://www.theguardian.com/us-news/2021/jun/25/donald-trump-general-mark-milley-crack-skulls>.

core First Amendment rights are fully respected in principle and in practice. New York can meet this moment by removing or restricting law enforcement access to some of the most dangerous tools and tactics used to suppress protest activity. This includes passing legislation to **eliminate law enforcement access to military weapons and armored vehicles**.⁴ State and local police have no business deploying weapons of war in our streets or neighborhoods. Cutting off law enforcement access to these weapons will help to make all New Yorkers safer when exercising their rights. The legislature must also **impose sharp restrictions on police use of chemical incapacitants and crowd-control munitions and devices**.⁵ Too many New Yorkers have been subject to needless and indiscriminate use of tear gas and pepper spray at protests—which are too often deployed as a cruel, painful, and ineffective means of crowd control. Similarly, police departments, including the NYPD, regularly make use of acoustic weapons like long range acoustic devices, which can cause pain and hearing damage, including the potential for permanent hearing loss. No New Yorker should have to risk exposure to harmful chemicals or sustaining permanent injury in exchange for exercising their right to demonstrate. Beyond these measures, lawmakers should consider further efforts to **curtail police crowd surveillance and identification capabilities, increase police identifiability during protest deployments and accountability for any protest-related misconduct, and increase protections for journalists, photographers, and protest monitors**, including protections for photographing and recording public officials and government buildings and property.

Additionally, the Legislature should **update the state’s Use of Force standards** for law enforcement officers engaged in protest duty. The United States Department of Justice has special recommendations⁶ for state and municipal agencies policing protests and political demonstrations; adapting those recommendations into law would help ensure the safe and fair policing of protest activities and potentially prevent escalation if force is used.

Lastly, because many anti-protester laws are proposed at the municipal or county level, legislators wishing to enact statewide protest protections should ensure that any state laws clearly and explicitly override less-protective local ones, establishing a baseline level of protections for protesters and safeguards against abuse upon which localities can build while ensuring that core principles cannot be weakened or undermined.

⁴ S.111-Krueger in the 2023-24 legislative session.

⁵ S.4444-Fernandez/A.7898-Simon, and S.4571-Ramos/A.2234-Hyndman in the 2023-24 legislative session.

⁶ Global Justice Information Sharing Initiative, Recommendations for First Amendment-Protected Events for State and Local Law Enforcement Agencies, Dec. 2011, <https://bjia.ojp.gov/sites/g/files/xyckuh186/files/media/document/Recommendations%20for%20First%20Amendment-Protected%20Events%20for%20state%20and%20local%20Law%20Enforcement.pdf>.