

# YOUR RIGHTS TO PROTESTING IN NEW YORK

## KNOW YOUR RIGHTS



All New Yorkers deserve a voice. We all have the fundamental right to speak out and engage in political protest.

The First Amendment of the United States Constitution and Article I, Section 8 of the New York State Constitution protect your right to assemble peacefully and express your views through protest. While the government has a duty to respect, facilitate, and protect your right to protest, it may place certain narrow and reasonable restrictions on the time, place, and manner of the exercise of free speech rights to protect the safety and rights of others — for example, requiring protesters to walk with the flow of traffic if marching in the streets.

Here's what you should know before heading out into the streets.

*This Know Your Rights information is not a replacement for legal advice.*



### Your Rights at Demonstrations and Protests

#### You Have the Right to:

- Protest peacefully on areas of public property that are known as “traditional public forums,” like a street, sidewalk, or park. You may also have the right to demonstrate or protest on other public property, like a plaza in front of government-owned property as long as you do not block access to the government building or interfere with government business.
- Protest on your own private property or the private property of others, with the owner's consent.
- Demonstrate, rally, or protest on a public sidewalk so long as pedestrian traffic or building entrances are not obstructed. We recommend that you leave half the sidewalk open for pedestrian traffic and ensure access to all building entrances. Police may direct you to move to the side of the street or the sidewalk to let others pass or for safety reasons.
- March on a public sidewalk without amplified sound. Check your local rules to see if a Sound Device Permit is required to use amplified sound in a public space.
- Hold signs as long as they are not affixed to a wooden, plastic, or metal pole.
- Hand out flyers or leaflets on a public sidewalk or in a public park. Avoid distributing flyers to people in vehicles in street traffic.

- Photograph or film police or protest activity in plain view (including photographing or filming a federal building) as long as you do not interfere with police activity. (On private property, the owner may set their own rules about whether you're allowed to take photos or to film). Police officers may not delete data on your electronic device under any circumstances and may not confiscate or demand to view your photographs or video without a warrant.

#### You Do Not Have the Right to:

- Block access to sidewalks or buildings.
- Disrupt counter protests. Counter protesters should not be allowed to physically disrupt the event they are protesting, but they do have the right to voice their disagreement with the protesters' message. Police are allowed to separate antagonistic groups but should allow them to be within sight and sound of each other.

### Police at Demonstrations and Protests

Police are obligated to respect your first amendment rights – including the right to peacefully protest. Here's what to look out for when police are deployed to a protest.

#### Policing Protest

- It is not legal for police to treat protests differently based on the message or viewpoint expressed or the identity of the participants.
- Police cannot discriminate against protesters and counter protesters.

- Shutting down a protest through an order to disperse should be a law enforcement agency's last resort. Police should not break up a gathering unless there is a clear and present danger of riot, disorder, interference with traffic, or other immediate threat to public safety. Individuals should receive a dispersal order that is audible and provides reasonable time to exit, and information on how and where to exit the protest.

### **Search & Arrest**

You never have to consent to a search of yourself or your property. Even if you expressly object to the search, be aware police may nevertheless conduct one but you may be able to legally challenge the search later. And if you do explicitly consent, it may affect you later in court. For more information, see NYCLU's **What to Do if You Are Stopped By The Police**.

Failure to comply with police orders may lead to arrest. If you get arrested, you may not have access to your phone.

### **Consider bringing identification:**

- While there is no legal requirement for you to carry identification, if you don't have identification and get arrested, your time in custody may be longer as police can detain you until you can be identified. You may want to memorize important telephone numbers or write them on your body, including the National Lawyers Guild's telephone number (212-679-5100) in case you get arrested.

### **File a complaint if you believe that your rights have been violated:**

- Write down everything you can remember, including the officers' names, rank, badge and patrol numbers, the identity of the law enforcement agency, and all stated reasons for the interaction.
- Get witnesses' contact information.
- Take photographs of any injuries.
- Keep medical records if you need to get medical care to address injuries.

- File a written complaint with the agency's internal affairs division or local civilian complaint board

### **Protecting Your Privacy**

While social media and other digital communications have become critical tools for organizing and joining protests, law enforcement also rely on these tools. Law enforcement agencies also use surveillance technology like StingRays that track cell phone usage, facial recognition software, and more to identify and track protesters.

### **To protect your digital security, consider:**

- Carrying as few electronic devices as possible.
- Using encryption services for your messaging and avoid using your phone's unencrypted messaging service when communicating with people during a protest.
- Enabling the disappearing messages function.
- Turning off all your location services.
- Disabling face/fingerprint/biometric unlock on your phone. A password is best to lock your phone when planning or participating in protests. Know that you have a right to object to a search of your device, refuse to give your pin or password, and refuse to unlock it for police.
- Reviewing your social media privacy settings to limit who can see your account and posts.

### **Protect others' digital privacy:**

- Avoid tagging or posting images of people without their permission to avoid risk of additional surveillance, doxxing, and retaliation.

### **Your Rights and Risks as a Non-Citizen**

You have the right to protest peacefully as a non-citizen. However, non-citizens may face additional challenges when exercising their First Amendment rights. As a non-citizen, you may want to consult an immigration attorney before going out to protest. It is also important for you to be aware that getting arrested, charged, or convicted while participating in a protest, may impact your current and future immigration status, any future immigration or visa applications, and any interactions with immigration and consular authorities. If you do not comply with law enforcement officials' directions to end activities or leave the area, you may risk getting arrested or charged especially if violence at the protest is imminent.

If stopped by an officer, you have the right to remain silent, speak in private with a lawyer, and refrain from telling the officer your immigration status. For more information on your rights, read the NYCLU's **What to Do if You're Stopped by Immigration Officers**.

