

Demonstrating on Public Property

Where can I exercise my First Amendment right to pass out leaflets or to hold a rally, March or demonstrate?

Because the First Amendment protects free speech from infringement by the government, leafleting and assembly is generally permissible in most public areas, such as public park, public streets and sidewalks, and outside public buildings. These locations are commonly known as public forums, which are generally defined as areas that can be used for the communication of any and all views on political and social issues.

There are three basic types of public forums:

- A traditional public forum is any area historically dedicated to public assembly and protest, such as public streets, public parks and public sidewalks.
- A limited public forum is public property that, while not typically dedicated to public assembly, has been open to expressive activity by particular categories of people or on particular subjects. Examples of limited public forums would be university meeting rooms open for use by student groups or a city auditorium open for theatrical performances.
- A non-public forum is public property that is not a traditional public expression. Examples of non-public forums include prisons and military bases (more information below). The government can severely restrict public expression in a non-public forum

The First Amendment does not regulate the activities of private individuals, business or organizations. You therefore do not have a constitutional right to speech, assembly or protest while on private property.

Can the government place any restrictions on the use of a public forum?

Yes. Depending on the specific public location and the government's interest in ensuring safety and order, restrictions governing the use of public property for assembly and protest may apply. The following are some locations-specific regulations to consider when planning protest activities.

Public sidewalks: Demonstrating groups should leave room for passer-by and should not block the flow of pedestrian traffic. If leafleting, demonstrators should not force passer-by to accept leaflets or harass individuals who refuse leaflets.

Public Streets: Any march on the public street is typically considered a parade; therefore the location, time and duration of the march are subject to regulation by the city officials to prevent traffic problems. Marchers may be expected to obey traffic laws (such as red light) during the march.

Lobbies of public buildings: It is more difficult to obtain access to the inside of a public building than it is to obtain access to a street or sidewalk outside. However, if some non-government-sponsored expressive activities are permitted in the lobby, then similar activities by others may not be prohibited based on the content of the expression. But if no activities are permitted, then it is unlikely that a rally or demonstration would be allowed inside.

Other types of public property: Some types of public property are non-traditional public forums and therefore have special restrictions on free speech. For example, protests are prohibited on military bases, even if those protesting are in the armed services. Similarly, protests on jail or prison property can be restricted for safety and security reasons. Post offices do not allow flyers to be posted inside the building and do not allow partisan political activity inside the building. However, leafleting and other protest activities are permitted on the public street or sidewalk outside. Demonstrations may be prohibited in the immediate vicinity of courthouses.

The Right To Free Expression

How does the First Amendment protect my right to free expression?

The First Amendment guarantees free expression by protecting the right to freedom of speech, freedom of the press, and freedom of assembly and petition. The courts also have ruled that the First Amendment protects the freedom of association, which is implied by the other freedoms listed above.

Free expression encompasses all forms of speech, from spoken and written word, to T-shirt slogans and black armbands. To rallies and protest signs, to organizational memberships. The First Amendment protects free expression from infringement by federal, state and local governments.

Can the government place any restrictions on my right to free expression?

Yes. The courts have consistently ruled that while the government may not restrict the actual content of speech, it may restrict the time, place, and manner of speech. For example, a municipality cannot permit members of only one political party to hold rallies on the public streets. This would be restricting speech based on content. But the government may prohibit political rallies from taking place at unusual hours or from block pedestrian or vehicle traffic. This would be restricting only the time, place and manner of speech.

The courts have generally found time, place and manner restrictions to be permissible because such regulations serve to ensure the safety and order of the community at large. However, it is important to note that in order to be constitutional, time, place and manner restrictions must be content-neutral, meaning they must apply to everyone regardless of the opinion being expressed.

Is any type of expression not protected by the First Amendment?

Yes. The courts have recognized several types of speech that do not fall within First Amendment guarantees:

- In 1919, Supreme Court ruled in Schenck v. U.S. (249 U.S. 47) that the First Amendment does not protect the speech that creates a “clear and present danger” (such as “shouting fire in a theatre”).

- In its 1942 decision in Chaplinsky v. New Hampshire (315 U.S. 568), the Supreme Court ruled that speech that incites violence or directly encourages others to commit a crime (“fighting words”) is a threat to the public safety and is therefore not protected by the First Amendment.
- In 1973, the Supreme Court found in Miller v. California (413 U.S.568), that the First Amendment does not protect “obscene” material. The courts established the “SLAPS” test for determining obscenity: speech is obscene if “the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.” However, obscenity remains difficult to define – as Supreme Court Justice Potter Stewart once said: “I know it when I see it.”
- The courts have ruled that defamation – a known false statement about a person or an organization intended to harm the reputation of that person or organization- is not protected by the First Amendment. Defamation in writing is libel, and defamation through the spoken word is slander.