

Know Your Rights: Protesting in Virginia

How can I protest?

The right to protest peacefully is protected by both the U.S. and Virginia constitutions – but police and government officials are allowed to place certain narrow restrictions on the exercise of speech rights during protests.

Can the police restrict my speech because it's controversial?

No. The First Amendment protects your right to express your opinion, even if it's unpopular. But there are some exceptions that are not protected, like libel or speech that incites imminent violence. Any restrictions the government places on speech must be nondiscriminatory, narrowly drawn “time, place and manner” restrictions.

Can a speaker be silenced for provoking a crowd?

Generally, no. You cannot be punished for riling up the audience. However, a speaker can be convicted for incitement if they specifically advocate for illegal actions, and those illegal actions are likely to imminently occur.

Where can I protest?

The First Amendment gives you the right to decide where best to express yourself, but restrictions may be applied in certain spaces. For example, constitutional protections are strongest in public spaces like sidewalks and are weakest on private property.

I want to organize a protest. Do I need a permit?

Sometimes. Check your local permit ordinance before you hit the streets.

How much noise can I make?

The answer varies depending on locality and the time and place you are speaking. Check your local ordinances.

What if counter-protestors show up at my protest?

Counter-protestors have free speech rights and usually must be allowed to voice their opposition, but they should not physically disrupt the event or cause harm to others.

Can I take videos or photos of the police at a protest?

Yes, generally. You have the right to photograph anything in plain view in a public space. Record openly and to maintain a safe distance. Do not obstruct or interfere with an officer's legitimate law enforcement aims. You have the right to photograph, video record, and audio record police officers in public during the performance of their duties. You can also record people making public speeches or protest speeches. Police may *never* delete your photos or videos without your permission. Nor may they confiscate or demand to see the footage you took without your permission or without a warrant.

On private property, the property owner decides the rules about photography or recording.

Disclaimer: This information is for educational purposes only and does not constitute legal advice. The application of First Amendment law can be complex and fact specific. For advice on your particular situation, please consult with an attorney.

Can I wear a mask on my face during a protest?

In Virginia, it is against the law for most people over 16 to wear a mask or other face covering with the intent to conceal their identity. There is no exception for the act of protesting.

Can the police shut a protest down?

Only if there is a clear and present danger of violence, disorder, interference with traffic, or another immediate threat to public safety. Issuing a dispersal order should be the police's last resort.

What happens if I am detained or arrested at a protest?

Try to remain calm and never physically resist a police officer. Keep your hands visible. Do not argue, resist, or obstruct the police, even if you believe they are violating your rights.

If you are stopped by an officer, ask them if you are free to leave. If the answer is yes, calmly walk away. If you are detained, ask the officer what crime you are suspected of committing. If you are placed under arrest, say you wish to remain silent and ask for a lawyer immediately. Do not say anything or sign anything without a lawyer present.

Do not consent to an officer looking through or deleting anything on your phone or camera. But if the officer reaches for your phone or camera, do not resist. Simply repeat that you do not consent to any search or seizure.

What should I do if I think my rights have been violated at a protest?

Write down everything you can remember. Try to get contact information from witnesses. Photograph any injuries. With this information, you can file a complaint with the agency's internal affairs division and your local civilian complaint board, as well as with the state attorney general's office. You may also want to contact an attorney.

What if I want to plan civil disobedience?

Civil disobedience is the active refusal to comply with certain laws as a form of protest. Make sure you know your rights before you begin. Familiarize yourself with the practical consequences of civil disobedience, and with the steps you can take to minimize your chances of an extended stay in jail.

Are there different rules for protesting on my college campus?

Generally, you have the right to engage in protected speech on your college campus, so long as your expression: (1) is in a public area of campus; (2) doesn't significantly disrupt classes or the school's other essential functions; and (3) complies with the "time, place, and manner" rules established by your school.