



Assembly

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Background

The First Amendment of the **BILL OF RIGHTS** provides that "Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble."

This provision applies to state government entities through the Due Process Clause of the Fourteenth Amendment. Though neither the federal Constitution nor any state constitution specifically protects rights of association, the United States Supreme Court and other courts have extended assembly rights to include rights of association.

Rights to free speech and assembly are not absolute under the relevant [JURISPRUDENCE](#). Government entities may restrict many types of speech without violating First Amendment protections. Many of the Supreme Court's First Amendment cases focus on two main questions: first, whether the restriction on speech was based on the content of the speech; and second, whether the speech was given in a traditional public forum or elsewhere. Some questions focus exclusively on the actual speech, rather than on aspects of the right to assembly. Other questions contain aspects of both the right to free speech and the right to assemble peacefully. Cases addressing free speech plus some conduct in the exercise of assembly rights often pose complex questions, since either the speech rights or the assembly rights may not protect the parties in these types of cases.

Since the courts take into consideration such a variety of factors when determining whether a particular speech or whether a particular assemblage is protected by the First Amendment, it is difficult to provide a concise definition of rights of assembly. Even in areas where a government entity may restrict speech or assembly rights, courts are more likely to find a violation of the First Amendment if speech or assembly is banned completely. Some restrictions merely involve the application for a permit or license to assemble, such as obtaining a license to hold a parade in a public street. Other time, place, and/or manner restrictions may also apply.

Content-Based vs. Content-Neutral Restrictions on Free Speech

The outcome of a First Amendment case may very well hinge on whether the restriction of speech is based on the content of the speech. If the restriction is content-based, courts scrutinize the restriction under a heightened standard compared with restrictions that are content-neutral. When courts apply this heightened scrutiny, they are more likely to find a First Amendment violation. Courts also recognize that content-neutral restrictions may cause as much or more harm than content-based restrictions. For example, a ban on all parades on public streets is much more intrusive than a ban on only some parades. If a restriction is content-neutral, a court will employ an intermediate standard of scrutiny.

Determining whether a restriction is content-neutral or content-based may be more difficult in the context of assembly rights than in the context of speech rights. For example, if a city requires that all groups obtain a permit to hold a parade, the restriction is more likely, at least on its face, to be content-neutral. However, if the city, through official or unofficial action, only issues permits to certain groups and restricts issuing permits to other groups, the restriction in its application is content-based, not content neutral.

Public vs. Private Speech

In addition to determining whether a restriction is content-based or content-neutral, courts also consider whether the speech or assembly is given or held in a public or private forum. Government property that has traditionally been used by the public for the purpose of assembly and to disseminate ideas is considered a traditional public forum. Content-based regulations in a traditional public forum are the most likely forms of speech to be found in violation of the First Amendment. Some content-neutral restrictions on the time, place, and manner of the speech are permitted, however, even in the traditional public forum.

Public-owned facilities that have never been designated for the general use of the public to express ideas are considered nonforums. Government may reasonably restrict speech, including some content-based speech, in these nonforums. This does not mean that all speech may be restricted on such property, but it does mean that speech can be restricted to achieve a reasonable government purpose and is not intended to suppress the viewpoint of a particular speaker.

Some public property that is not a traditional public forum may become a designated or limited public forum if it is opened to the use of the general public to express ideas. Examples include a senior center that has been opened for the general public to express ideas or a state-operated television station used for political debates. Courts will strictly scrutinize content-based restrictions in a designated or limited public forum when the restriction on speech is related to the designated public use of the property.

Reasonable Time, Place, and Manner Restrictions

Government entities may make reasonable content-neutral restrictions on the time, place, and manner of a speech or assemblage, even in a traditional public forum. This action directly affects the rights of assembly, since a government entity may restrict the time and place where an assembly may take place, as well as the manner in which the assembly occurs. The restrictions must be reasonable and narrowly tailored to meet a significant government purpose. The government entity must also leave open ample channels for communication that interested parties wish to communicate.

Overbreadth and Vagueness

Statutes and ordinances are often found to infringe on First Amendment rights because they are unconstitutionally vague or the breadth of the [STATUTE](#) or [ORDINANCE](#) extends so far that it infringes on protected speech. For example, some statutes and ordinances prohibiting loitering on public property have been found to be unconstitutional on the grounds of overbreadth since some people could be prosecuted for exercising their protected First Amendment rights. Similarly, statutes and ordinances restricting speech may be so vague that a person of ordinary intelligence could not determine what speech was restricted based on a reading of the law.

Permissible and Impermissible Restrictions on Rights of Assembly

It is difficult to make general statements about when assembly rights are guaranteed and when they are not. Whether assembly is or is not guaranteed depends largely on where and when the assembly takes place, as well as the specific restrictions that were placed on this right by government entities.

Speech and Assembly in Public Streets and Parks

Public streets, sidewalks, and parks are generally considered public forums, and content-based restrictions on these will be strictly scrutinized by the courts. However, reasonable time, place, and manner restrictions are permitted if they are neutral regarding the content of the speech.

The use of public streets, sidewalks, and parks may not always be considered use of public forums, which often causes confusion in this area. For example, in the 1990 case of *United States v. Kokinda*, the Supreme Court held that a regulation restricting use of a sidewalk in front of a post office was valid because, in part, that particular sidewalk was not a public forum. Similar results have been reached with respect to some public parks.

Parade Permits and Other Restrictions

The right to assemble and hold parades on public streets is one of the more important rights of assembly. However, these rights must be balanced with the interests of government entities to maintain peace and order. The Supreme Court in the 1992 case of *Forsyth County v. Nationalist Movement*, held that a government entity may require permits for those wishing to hold a parade, march, or rally on public streets or other public forums. Local officials may not be given overly broad discretion to issue such permits.

Speech and Assembly in Libraries and Theaters

The Supreme Court has held that a publicly owned theatre is a public forum. Thus, government may not make content-based restrictions on speech or assembly in these theaters. However, government entities may make reasonable time, place, and manner restrictions in publicly-owned theaters. Libraries, on the other hand, are not considered public forums and may be regulated "in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality to all."

Speech and Assembly in Airports and Other Public Transportation Centers

The Supreme Court has held that airports are not traditional public forums, so government may make certain reasonable restrictions on assembly and speech rights in these areas. Courts have reached different conclusions with respect to other centers of public transportation, such as bus terminals, railway stations, and

ports.

Picketing and Other Demonstrations

The act of picketing is unquestionably intertwined with the First Amendment right to peaceful assembly. Courts have often recognized the right to picket and hold other peaceful demonstrations particularly in public forums. The right to picket, however, is limited and depends on the specific activities of the participants and the location of the demonstration. For example, if a demonstration breaches the peace or involves other criminal activity, law enforcement may ordinarily end the demonstration in a reasonable manner. Similarly, a government entity may reasonably restrict demonstrations on public streets in residential areas.

Loitering and Vagrancy Statutes

State and local governments have often sought to eliminate undesirable behavior by enacting statutes and ordinances that make loitering a crime. Many of these statutes have been held to be constitutional, even those that prohibit being in a public place and hindering or obstructing the free passage of people. Such rulings have a significant effect on the rights of assembly, since these crimes involve a person's presence in a certain place, in addition to suspicious behavior.

A number of courts have held that specific antiloitering statutes and ordinances have been unconstitutional. Some of these decisions are hinged on First Amendment rights, while others hinge on other rights, such as Fourth Amendment protections against unreasonable searches and seizures. Several of these statutes have been struck down on grounds of vagueness or overbreadth. Similarly, courts have struck down statutes and ordinances outlawing [VAGRANCY](#) on the grounds of vagueness or overbreadth.

Speech and Assembly on Private Property

The general rule is that owners of private property can restrict speech in a manner that the owner deems appropriate. Some older cases have held that private property, such as a privately owned shopping center, could be treated as the equivalent of public property. However, modern cases have held otherwise, finding that private property was not subject to the same analysis regarding First Amendment rights as public property.

State Laws Affecting Rights of Assembly

Some municipalities in every state require interested individuals to file for a permit to hold a parade or other gathering on public property. These ordinances are often the subject of [LITIGATION](#) regarding alleged [INFRINGEMENT](#) on First Amendment rights of peaceful assembly. Antiloitering statutes are also commonplace, though several of these have been challenged on First Amendment grounds as well. Whether a specific ordinance, statute, or official action constitutes a violation of the First Amendment depends largely on the specific facts of the case or the specific language of the statute or ordinance.

ALABAMA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state's criminal laws prohibit loitering, including begging and criminal [SOLICITATION](#).

ARIZONA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering, including begging and criminal solicitation.

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ARKANSAS: Several municipalities require that interested parties file for a permit to hold a parade in public streets. Some of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state's criminal laws prohibit loitering.

CALIFORNIA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state's criminal laws prohibit loitering, and these laws have generally been upheld in First Amendment challenges.

COLORADO: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state requires a permit for parties to use the state capitol building grounds. The state's criminal laws prohibit loitering, including begging and criminal solicitation. The Colorado Supreme Court held that the state's loitering statute was unconstitutional; this statute was subsequently modified.

DELAWARE: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering, including begging, criminal solicitation, and loitering on public school grounds.

FLORIDA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws regarding loitering have been the subject of several lawsuits. These laws make it a crime to loiter or prowl in a place, at a time or in a manner not usual for a law-abiding individual.

GEORGIA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state's criminal laws regarding loitering have been the subject of several lawsuits. These laws make it a crime to loiter or prowl in a place, at a time, or in a manner not usual for a law-abiding individual.

HAWAII: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering for solicitation of prostitution.

IDAHO: Several municipalities require that interested parties file for a permit to hold a parade in public streets.

ILLINOIS: Several municipalities require that interested parties file for a permit to hold a parade in public streets or public assembly. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state statutes permit municipalities to prohibit vagrancy, and loitering is prohibited in the state by criminal statute.

INDIANA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. Criminal gang activity is a separate offense under state criminal laws.

IOWA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state provides specific laws prohibiting loitering and other congregation on election days near polling places.

KANSAS: Several municipalities require that interested parties file for a permit to hold a parade in public streets.

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KENTUCKY: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering for the purpose of engaging in criminal activity.

LOUISIANA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit vagrancy and loitering, though these statutes have been attacked on First Amendment grounds several times.

MAINE: Several municipalities require that interested parties file for a permit to hold a parade in public streets.

MARYLAND: Several municipalities require that interested parties file for a permit to hold a parade or other public assembly in public streets or areas. The state's criminal laws prohibits loitering or loafing around a business establishment licensed to sell alcohol.

MASSACHUSETTS: Several municipalities require that interested parties file for a permit to hold a parade in public streets, though a number of these ordinances have been the subject to challenges on First Amendment grounds. The state's criminal laws prohibit loitering in some specific venues, such as railway centers.

MICHIGAN: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights.

MINNESOTA: Several municipalities require that interested parties file for a permit to hold a parade, march, or other form of procession on public streets and other areas. The state's criminal laws prohibit vagrancy, including some instances of loitering.

MISSISSIPPI: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights.

MISSOURI: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit vagrancy, including some instances of loitering.

MONTANA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit vagrancy and loitering around public markets.

NEBRASKA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering in specified venues.

NEVADA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering around schools and other areas where children congregate. The state permits municipalities to enact ordinances to prohibit loitering.

NEW HAMPSHIRE: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering and prowling in specified circumstances.

NEW JERSEY: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state's criminal laws prohibit loitering for the purpose of soliciting criminal activity or in public transportation terminals.

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NEW YORK: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state has enacted a number of laws prohibiting loitering, including loitering for the purpose of soliciting passengers for transportation, loitering for the purpose of criminal solicitation, and loitering in public transportation centers. The statute permits municipalities to enact ordinances prohibiting loitering. Several of the antiloitering laws have been the subject of litigation attacking the laws on First Amendment grounds.

NORTH DAKOTA: Several municipalities require that interested parties file for a permit to hold a parade or other processions in public streets.

OHIO: Several municipalities require that interested parties file for a permit to hold a parade or engage in the solicitation of business. The state's criminal laws prohibit loitering in public transportation centers and in polling centers during elections.

OKLAHOMA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering for the purpose of engaging in specified criminal acts.

OREGON: Several municipalities require that interested parties file for a permit to hold a parade in public streets. Some municipalities also require a noise permit when playing amplified noise in a public place.

PENNSYLVANIA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. A number of these ordinances have been attacked on First Amendment grounds, and some ordinances have been found to be in violation of First Amendment rights. The state's criminal laws prohibit loitering for the purpose of engaging in specified criminal acts.

RHODE ISLAND: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's criminal laws prohibit loitering for indecent purposes, loitering in public transportation centers, and loitering at or near schools.

SOUTH CAROLINA: Several municipalities require that interested parties file for a permit to hold a parade in public streets. The state's laws prohibit loitering in public transportation centers.

TENNESSEE: Several municipalities require that interested parties file for a permit to hold a parade on public streets. The state's criminal laws prohibit loitering for the purpose of engaging in specified criminal acts.

TEXAS: Several municipalities require that interested parties file for a permit to hold a parade on public streets. The state's laws prohibit loitering in polling centers during elections.

UTAH: Several municipalities require that interested parties file for a permit to hold a parade on public streets.

VERMONT: The state's laws prohibit loitering in public transportation centers and other public property.

WASHINGTON: Several municipalities require that interested parties file for a permit to hold a parade or march on public streets. The state's laws prohibit loitering in public transportation centers.

WEST VIRGINIA: Several municipalities require that interested parties file for a permit to hold a parade on public streets. The state's laws prohibit loitering at or near school property.

WISCONSIN: Several municipalities require that interested parties file for a permit to hold a parade on public streets. The state's laws prohibit loitering in public transportation centers.

Additional Resources

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The First Amendment: A Reader. Garvey, John H., and Frederick Schaver, West Publishing Co., 1992.

Freedom of Association. Gutman, Amy, Princeton University Press, 1998.

Law and the Company We Keep. Soifer, Aviam, Harvard University Press, 1995.

The Right of Assembly and Association, Second Revised Edition. 2nd rev. ed., Abernathy, M. Glenn, University of South Carolina Press, 1981.

Organizations

American Civil Liberties Union (ACLU)

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National Coalition Against Censorship (NCAC)

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URL: <http://www.ncac.org/>

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