

KNOW YOUR RIGHTS

FREE SPEECH, PROTESTS
& DEMONSTRATIONS
IN CALIFORNIA



AN ACTIVIST'S GUIDE
FROM THE ACLU



PRODUCED BY THE ACLU OF NORTHERN CALIFORNIA, JANUARY 2010.

WRITTEN BY Michael Risher, Alan Schlosser, and Rachel Swain.

EDITED BY Laura Saponara. DESIGNED BY Gigi Pandian. PRINTED BY Inkworks Press.

PHOTOS ACLU of Southern California: cover, inside cover, 3, 13, and 26; ACLU of San Diego & Imperial Counties: 30; Michael Rauner: 18; Michael Woolsey: 16.

COVER PHOTO Spring 1995, UCLA students protest the U.C. Board of Regents decision to end affirmative action programs for admissions throughout the network.

CONTENTS

INTRODUCTION	1
THREE PRINCIPLES TO REMEMBER	2
ABOUT THIS GUIDE	3
CAN YOU SAY THAT? What speech is protected	4
RED TAPE: NAVIGATING THE PERMIT PROCESS Permit ordinances Challenging overbroad ordinances	7
SPEECH PLUS: BEYOND THE SPOKEN WORD Music and noise Leafleting, picketing and solicitation Flag desecration	10
SIT-INS TO HANDCUFFS: BRUSHES WITH THE LAW Civil disobedience Your rights on arrest Limits to police power	12
CHEAT SHEET OF TIPS AND LEGAL RESOURCES	14
LOCATION Public property Schools, universities, medical centers and houses of worship Private property	21
ENDNOTES	27

SNAPSHOTS IN HISTORY

- ◆ You Can't Say That.... Can You? (*Brandenburg v. Ohio*) 5
- ◆ Delineating Free-Speech Rights (*Cohen v. California*) 6
- ◆ When the Nazis Came to Town (*Skokie v. ACLU*) 8
- ◆ Nationalists Invalidate Overbroad Ordinance (*Forsyth County v. Georgia Nationalist Movement*) 10
- ◆ Flag-Burning as a Form of Protest (*Texas v. Johnson*) 11
- ◆ Limiting Police Power (*ILWU v. Oakland*) 20
- ◆ Free Speech Zones Challenged (*NOW v. San Diego and the RNC*) 20
- ◆ Free Speech as a State Right (*Robins v. Pruneyard*) 22
- ◆ Reasonable Time, Place and Manner Restrictions (*Hill v. Colorado*) 23

We the People

insure domestic Tranquility, provide for the common Defense, and our Posterity, We ordain and establish this Constitution

Article I

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

—The First Amendment to the U.S. Constitution

INTRODUCTION

If you are holding this booklet in your hands you probably care as deeply about free speech as we do. And you may need some very practical advice.

We produced this guide for people like you: people who are not afraid to stand up for what they believe and those who may never have thought of themselves as protesters but who are forced into action to protect a precious freedom or right. Native Californian or newly arrived immigrant, student or worker, environmentalist or pro-choice activist—if you want to speak out, this guide is for you.

You are part of a vigorous tradition of protest that dates back decades in our state: from the workers who went on strike against exploitative labor conditions on the docks in San Pedro in 1923 and were arrested by the hundreds; to the repressive Red Scare years, when demonstrators were hosed down by police outside House Un-American Activities Committee hearings in San Francisco City Hall; to the civil rights protesters of the 1960s, who helped end segregation in housing developments and businesses throughout California.

Both the California Constitution and the First Amendment to the United States Constitution protect your right to free expression. But there are many questions you face when you decide to organize and speak out. When do you need a police permit? Are there things you cannot say or do? Are there any limitations on when or where you can demonstrate? What about civil disobedience? We hope that this guide will help answer these questions for you.

For more than 75 years, the ACLU has supported the right of individuals from all walks of life to dissent, demonstrate and make their voices heard. Today, you are contributing to this rich tradition of activism. Whatever you believe, we urge you to stand up and speak out. Our future lies in your hands.

Good luck,

Kevin Keenan, *Executive Director, ACLU of San Diego*

Ramona Ripston, *Executive Director, ACLU of Southern California*

Abdi Soltani, *Executive Director, ACLU of Northern California*



THREE PRINCIPLES TO REMEMBER

1. CONDUCT, NOT CONTENT

It's not what you say—it's the way that you say it. Your right to express your opinion is protected no matter what beliefs you hold. What matters is *how* you use that right. If you organize a protest that causes serious disruption, the government may be able to intervene. But with a few notable exceptions, nobody can restrict your rights simply because they don't like what you say.

2. FREE SPEECH IS FOR EVERYONE

Young or old; anarchist or evangelical; pacifist or hawk; Mormon or Muslim; these rights apply to *you*. It doesn't matter whether you're a U.S. citizen, whether you're of voting age, or whether you speak English. Free-speech rights are for *everybody*. Don't let anyone tell you otherwise.

3. WHEN, WHERE AND HOW

Consider *when*, *where* and *how* you use your free-speech rights. If you organize a rally that causes violence or unnecessary disruption, your event may be disbanded. Every municipality has regulations and it's your responsibility to understand them. You must observe reasonable regulations on *time*, *place*, and *manner* when you exercise your rights to demonstrate and protest.

ABOUT THIS GUIDE

THIS GUIDE IS DESIGNED TO ANSWER COMMON QUESTIONS.

IT DOES:

- ◆ Outline your free-speech rights under the U.S. and California constitutions;
- ◆ Define the limits to your rights, including when speech may *not* be protected;
- ◆ Outline the steps you may take to keep your demonstration lawful;
- ◆ Give you the tools to recognize when your rights have been violated.

IT DOES NOT:

- ◆ Advise on political strategy or on the nuts and bolts of how to organize a protest;
- ◆ Provide specifics on local ordinances or on state laws outside California;
- ◆ Replace legal counsel, should you be arrested, or believe your rights have been violated.



CAN YOU SAY THAT? WHERE PROTECTIONS END

IS ALL SPEECH PROTECTED?

The First Amendment protects your right to express your opinion, even if it's unpopular. You may criticize the President, the Congress, or the chief of police without fear of retaliation. But this right doesn't extend to libel, slander,¹ obscenity,² "true threats,"³ or speech that incites imminent violence or law-breaking.⁴ If you grab a megaphone during a riot and yell "shoot the cop" or "loot the shop," you may reasonably expect trouble.

CAN I TALK ABOUT GOVERNMENT OVERTHROW OR TAKING OVER THE STREETS?

Yes, for the most part. In the 1940s and '50s, suspected subversives or Communists were often charged with 'incitement to illegal activity' and convicted. Subsequent courts have interpreted the government's ability to prohibit speech as incitement more narrowly. The government can't stop you from talking generally about ideas or future events. But it may ban speech that's "*directed to inciting or producing imminent lawless action and is likely to incite or produce such action.*"⁵

WHAT IF OTHERS REACT VIOLENTLY TO WHAT I SAY?

You can't be held responsible for the way that counter-demonstrators or your own supporters react, as long as your words don't directly incite violence or law-breaking. It's the responsibility of the police to control the crowd.⁶

"Fear of serious injury cannot alone justify suppression of free speech and assembly.... To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced... that the danger apprehended is imminent.... the evil to be prevented is a serious one."

—Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)

SNAPSHOTS IN HISTORY
YOU CAN'T SAY THAT.... CAN YOU?

DATE: 1969
LOCATION: HAMILTON COUNTY, OHIO

AT ISSUE: Firearms, cross-burning, and the promise of vengeance against "niggers and Jews" were just a few features of the Ku Klux Klan rally that landed KKK spokesperson Clarence Brandenburg a conviction for advocating violence under Ohio's Criminal Syndication statute. Until the U.S. Supreme Court weighed in.

RESULT: The Court struck down Brandenburg's conviction, holding it unconstitutional to punish the abstract advocacy of violence or law-breaking. The Justices cemented into law a new test for seditious speech: that it must be "directed to inciting or producing *imminent* lawless action and is *likely* to incite or produce such action" (emphasis added).

Film

ACLU

SNAPSHOTS IN HISTORY

“FUCK THE DRAFT”: DELINEATING FREE-SPEECH RIGHTS

ACLU

DATE: 1971

LOCATION: LOS ANGELES, CALIF.

AT ISSUE: After Paul Robert Cohen walked through a courthouse with “Fuck the Draft” emblazoned on his jacket, the Superior Court of Los Angeles County convicted him of disturbing the peace. Cohen charged the court with violating his First Amendment rights.

RESULT: The U.S. Supreme Court overturned Cohen’s conviction, rejecting the notion that a voice may be muzzled to protect a “captive audience.” “We cannot indulge in the facile assumption that one can forbid particular words without a substantial risk of suppressing ideas in the process,” wrote the Court. “Surely the state has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us.”

Film



RED TAPE: NAVIGATING THE PERMIT PROCESS

PERMIT ORDINANCES

WHEN DO I NEED A PERMIT?

Whether you’re marching on city hall, holding a candlelight vigil, or rallying outside the statehouse or a private business, you should check your local permit ordinance before you put on your marching shoes and pull out the megaphone. While regulations vary, here are some guidelines:

- The government can’t prohibit marches on public sidewalks or streets, or rallies in most public parks or plazas. But it can often require a permit to regulate competing uses of the area and to ensure you respect reasonable time, place and manner restrictions.⁷
- You shouldn’t need a permit for demonstrations that don’t “realistically present serious traffic, safety, and competing-use concerns beyond those presented on a daily basis by ordinary use of the streets and sidewalks.”⁸ If you hold a small rally in a public park or march on the sidewalk and obey traffic laws, you generally won’t need a permit.⁹

WHEN SHOULD I APPLY FOR MY PERMIT?

Most permit ordinances require that an application be submitted a few days in advance, so be sure to give officials sufficient notice. But advance notice periods should be days, not weeks, and there should be an exception to allow demonstrations in response to breaking news.¹⁰ Some activists have successfully challenged ordinances that fail to meet these standards.

OVERBROAD ORDINANCES

WHEN IS AN ORDINANCE INVALID?

An ordinance is invalid if it’s unreasonably or unnecessarily burdensome, if it prevents you from communicating your message, or if it’s selectively enforced. Remember: the government can’t discriminate against you for the *content* of your speech. This means that city officials may not impose additional burdens or costs on you because your message is controversial.¹¹

WHEN CAN THE CITY DENY MY PERMIT?

A municipality must have *precise* and *specific* standards for denying a permit. An ordinance with no standards, or with vague standards such as “will not disturb others” or “in the public interest” or “in the interest of vehicular or pedestrian traffic safety” gives individual officials too much discretion.¹² Such an ordinance is unconstitutional and you can’t be lawfully punished for violating it.¹³ If the government denies you a permit for expressive activity, it should tell you why it has done so.¹⁴

SNAPSHOTS IN HISTORY FREE SPEECH IS FOR EVERYONE: WHEN THE NAZIS CAME TO TOWN

DATE: 1977

LOCATION: SKOKIE, ILL.

AT ISSUE: Local officials knew trouble was brewing when the American Nazi Party sought a permit to march through Skokie, where thousands of Holocaust survivors lived. After the U.S. Supreme Court overturned an injunction stopping the rally, Skokie officials struck back. They passed ordinances banning the dissemination of materials or the wearing of symbols that promote hatred based on race or religion. That's when the Nazis called the ACLU.

RESULT: The ACLU represented the Nazis in the U.S. Supreme Court and in opposing a prior restraint on their march and in their subsequent challenge to the ordinances. In a historic affirmation of the First Amendment's prohibition against government restriction of speech based on message or ideas, the federal court of appeals invalidated the ordinances, ruling that: "If these civil rights are to remain vital for all, they must protect not only those society deems acceptable, but also those whose ideas it quite justifiably rejects and despises."

ACLU

Film

"Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press."

—Article I, Section 2 of the
California Constitution

CAN THE CITY TELL ME TO CHANGE MY ROUTE?

The government may impose *reasonable* restrictions on the time, place, and manner of your event in order to reduce the amount of disruption it will cause. However, a demonstration should be allowed to take place within "sight and sound" of its intended audience.¹⁵ You can challenge efforts to re-route your march away from busy crowds or main streets or to dictate when it must start and end—because you can't communicate your message if there's nobody to hear it.

WHAT IF PAST MARCHES HAVE TURNED VIOLENT?

The government can't deny a permit just because past demonstrations by your group or others ended in civil disobedience or a disorderly brawl.¹⁶ Likewise, officials can't ask you to promise that protesters will obey the law before agreeing to issue your permit.¹⁷

CAN THE CITY ASK ME TO COVER THE COSTS OF MY PROTEST?

Cities may charge for the actual costs of a demonstration, including the costs of processing permits, traffic control, certain narrow insurance requirements and some clean-up costs, but you may challenge excessive fees. Groups have successfully challenged burdensome fees by arguing that:

- ♦ The fee or costs have been imposed or increased because the **content** of the event is controversial and may provoke counter-demonstrations or require more police;¹⁸
- ♦ The city's interests can be adequately protected without the fees;¹⁹
- ♦ The regulation doesn't include a waiver for groups that can't afford the charges and have no other way to publicize their views;²⁰ or
- ♦ There's no justification for imposing liability on demonstrators because liability should not extend beyond injuries caused by your own actions or negligence.²¹

WHAT SHOULD I DO IF I BELIEVE A CITY'S PERMIT ORDINANCE VIOLATES MY RIGHTS?

You should consult an attorney or contact the ACLU's advice line (see Resources, p. 14). Although the ACLU cannot provide legal services to all callers, our civil liberties counselors, in consultation with our attorneys, can provide you with helpful information and referrals.

SPEECH PLUS: BEYOND THE SPOKEN WORD

HOW MUCH NOISE CAN I MAKE?

The answer varies from city to city but one general principle applies: *You may use amplification devices as long as your intent is to communicate your message, not to disturb the peace.* The government may require permits for music, drums and loudspeakers, but ordinances should be narrowly tailored so that they prevent excessive noise without interfering with your free-speech rights. Check your local regulations. You may not need a permit to use a bullhorn or megaphone, but the government may ban noisy parties without a purpose, or sound that is “amplified to a loud and raucous volume.”²²

CAN I STOP PEOPLE ON THE SIDEWALK?

Yes. You have the right to approach *willing* passersby to hand them a leaflet, engage them in conversation, or ask them to sign a petition.²³ But you may not obstruct or harass passersby after they have informed you that they are not interested. You shouldn't need a permit to leaflet on public sidewalks, in parks or public plazas, or even to go door-to-door talking to people.²⁴

WHERE CAN I SOLICIT CONTRIBUTIONS?

The First Amendment protects your right to ask people for money.²⁵ However, this

right is more tightly regulated than other forms of speech since it's considered more disruptive, particularly if you are asking for people to give you money on the spot.²⁶ The courts have ruled, for example, that you don't have a right to solicit money inside an airport terminal. Also, you may need a permit to solicit funds. Many localities also make it illegal for you to solicit funds at a house where “no solicitation” signs are posted. Check your local regulations to be sure, and remember: if an ordinance is unreasonably burdensome, or if it discriminates based on what you want to say, it may be unlawful.²⁷

CAN I SET UP A TABLE TO HOLD MY LITERATURE OR A CHAIR SO I CAN SIT DOWN?

The First Amendment protects your right to use a table or newsrack to display materials, subject to the usual time, place and manner rules.²⁸ People who have a physical condition that substantially limits their ability to stand have the right to sit down.²⁹ In either case, the police can prohibit you from blocking the sidewalk.

CAN I BURN THE AMERICAN FLAG AS A SIGN OF PROTEST?

Yes. In 1989, a landmark U.S. Supreme Court case invalidated the federal Flag Protection Act, along with flag desecration laws in 48 states.³⁰ A flag desecration amendment to the Constitution, which was recently proposed and is likely to surface again, would permit Congress to pass a law barring the desecration of the U.S. flag, but no such law is currently on the books.



SNAPSHOTS IN HISTORY

CONDUCT, NOT CONTENT: NATIONALIST MARCHERS INVALIDATE OVERBROAD ORDINANCE

ACLU



DATE: 1992

LOCATION: FORSYTH COUNTY, GEORGIA

AT ISSUE: Racially charged Forsyth County had a history of violent demonstrations. In 1987, after confrontations between civil rights marchers and rock-throwing nationalists catapulted police protection costs to over \$670,000, the county enacted an ordinance requiring permit applicants to pay in advance for police protection and instructed county administrators to set the amount. Two years later, the Nationalist Movement filed suit, protesting the \$100 fee levied for a proposed march to protest the Martin Luther King, Jr. federal holiday.

RESULT: The Supreme Court held that it was unconstitutional to permit an administrator to examine the content of the message and the likely reaction, and to vary the fee based on the estimated cost of maintaining public order. Capping the fee at \$1,000, the justices said, did not render the ordinance valid.

10

Film

SNAPSHOTS IN HISTORY

AN INARTICULATE GRUNT? FLAG BURNING AS A FORM OF PROTEST

ACLU



DATE: 1989

LOCATION: DALLAS, TEXAS

AT ISSUE: When Gregory Lee Johnson touched a match to kerosene during an anti-Reagan demonstration, he ignited more than an American flag. Charged with violating a Texas law protecting respected objects, Johnson brought the red-hot debate between free expression and the sanctity of the flag all the way to the U.S. Supreme Court.

RESULT: In a 5-4 opinion that reflected the rift in the nation, the Court ruled it unconstitutional to prohibit “the expression of particular political views” by banning the burning of flags. The “principal function of free speech under our system of government is to invite dispute,” wrote Justice William Joseph Brennan, Jr. He continued, “it may indeed best serve its high purpose when it induces conditions of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” Justice William Rehnquist, in the dissenting opinion, called flag desecration the equivalent of an “inarticulate grunt.”

11

Film

SIT-INS TO HANDCUFFS: BRUSHES WITH THE LAW

CIVIL DISOBEDIENCE

WHAT IF I'M PLANNING CIVIL DISOBEDIENCE?

Civil disobedience is the active refusal to comply with certain laws as a form of protest. If you're planning to block an intersection or lie down in the middle of the street, make sure you know your rights *before* you begin. Take time to 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:

- ♦ Carry current identification. If you don't have ID, you may be taken to jail for a very minor offense instead of getting a ticket.
- ♦ Familiarize yourself with "Your Rights on Arrest" (page 17) and make sure you understand the likely charges and court outcomes of your activity (see "What Can the Police Charge Me With," page 16).
- ♦ Be aware of any consequences particular to *you*, such as:
 - If you're a *non-citizen*, the government may communicate your arrest to the U.S. Immigration and Customs Enforcement, which could affect your immigration status and even result in your deportation.
 - California law prohibits most private employers from asking about arrests that did not result in a conviction.³¹ However, if you apply for a job in law enforcement, in another state, or with the *federal government*, you may be asked about arrests as well as convictions.
 - If there is a *warrant* out for your arrest, you may be held in custody.
- ♦ Be prepared: Tool up with resources from experienced protest groups (see Resources, page 14).



AT RIGHT June 24, 1963. Demonstrators leave the First A.M.E. Church in downtown Los Angeles on their way to join a march of more than 1,000 people that culminated with a protest against school segregation in front of the Los Angeles Board of Education building.

SPEAK OUT: ACLU TIPS

Speech rights are for EVERYONE. Don't let anyone tell you otherwise. Nobody can discriminate against you or stop your protest because of the CONTENT of your speech.

Plan your activity carefully. Apply for your permit ahead of time if possible. But remember, permit ordinances should allow for spontaneous demonstrations.

Excessive noise or disruption, obstructions of sidewalks or doorways, or harassment of unwilling passers-by may give police grounds to end your activity.

Avoid directly advocating violence or imminent lawless activity. This may cause the police to intervene to stop your demonstration and land you in trouble.

Kee a valid ID and a list of phone numbers on your person. You may request an attorney and make up to three local phone calls if you are arrested.

Observe traffic rules and other reasonable time, place and manner restrictions. But remember, you have a right to be heard. Officials should not direct you to a route that doesn't reach your target audience.

Understand the most common charges filed against protesters before you leave the house.

There are different rules for different locations. Make sure you know who owns the venue and which rules apply before your activity begins.

Speak out, speak up, speak freely!

RESOURCES:

Northern California www.aclunc.org (415) 621-2488

Southern California www.aclu-sc.org (213) 977-5253

San Diego & Imperial Counties www.acalusandiego.org (619) 232-2121 x6

HOW DO I OBTAIN A PERMIT?

See page 7 for details on when a permit is and isn't required. Be aware that permit application procedures vary by city. In general, try the special events or special activities unit, often housed under the city's parks and recreation department or police department.

ANOTHER TIP: PHOTOCOPY THESE 2 PAGES OF KEY RESOURCES TO DISTRIBUTE AS A FLYER FOR ACTIVISTS. ONLINE AT WWW.ACLUNC.ORG/RIGHTSOFDEMONSTRATORS



LEGAL SERVICES

THE NATIONAL LAWYERS GUILD—San Francisco Bay Area chapter offers legal observers, on-call attorneys, a hotline for arrestees, and attorneys for protesters charged with crimes—all on a volunteer basis. Services can extend as far as Sacramento and San Jose. Request help as far in advance as possible, so that the NLG has time to line up its volunteers. A legal support request form is available on the website or call (415) 285-5067. WWW.NLGSF.ORG

THE MIDNIGHT SPECIAL LAW COLLECTIVE provides legal trainings and occasional legal support to activists and community groups. Trainings are on a variety of topics including navigating the legal system, what to do if you're called before a grand jury, and data security for activists. Trainings are on a sliding scale and take place mostly in the Bay Area. WWW.MIDNIGHTSPECIAL.NET

THE RUCKUS SOCIETY is not a legal resource but provides direct action education via training camps and community-requested trainings. Groups can request trainings in everything from choosing an action location to street theater. On the website you'll find training manuals and a training request form. Trainings are on a sliding scale and take place in many regions across North America. WWW.RUCKUS.ORG

ACLU SERVICES: The ACLU Legal Department is not a legal aid services organization. We bring a select number of impact cases to defend and promote the fundamental guarantees of individual liberties protected by the federal and state constitutions.

If you are in Northern California and feel that your constitutional rights have been violated, call the **ACLU OF NORTHERN CALIFORNIA** at (415) 621-2488 from 10 a.m. to 3 p.m. or go to www.aclunc.org/about/frequently_asked_questions.shtml. Volunteer counselors can bring your request to the attention of an attorney for review or give you an appropriate referral to another agency.

IN SOUTHERN CA, call (213) 977-5253 or go to www.aclu-sc.org/pages/legal_intake

IN SAN DIEGO & IMPERIAL COUNTIES, call (619) 232-2121 x6 or go to www.aclusandiego.org/legal_item.php and click on "request legal assistance"

ACLU ACTIVIST TOOLKIT contains detailed instructions on everything an activist needs, from planning a campaign to running an effective meeting to publicizing an event (www.aclunc.org/action/activist_toolkit/index.shtml).

WHAT CAN THE POLICE CHARGE ME WITH?

Even if *you* view your expressive activity as lawful, there's a chance that the police will regard it as over the line. So, whether you're planning to engage in civil disobedience or not, you should be familiar with the California statutes most often invoked against demonstrators:

- ◆ Resisting arrest or delaying a peace officer (Penal Code Section 148)
- ◆ Disrupting a public meeting (Penal Code Section 403)
- ◆ Riot and unlawful assembly (Penal Code Sections 404-408)
- ◆ Failure to disperse (Penal Code Sections 409)
- ◆ Disturbing the peace (Penal Code Section 415)
- ◆ Trespassing (Penal Code Section 602)
- ◆ Refusing to obey a peace officer who is enforcing the Vehicle Code (Vehicle Code Section 2800(a))
- ◆ Attempting to free a person who has just been arrested (Penal Code Section 405a)
- ◆ Using force, a threat of force, or physical obstruction to interfere with a person's right to reproductive health services or to attend a place of religious worship (18.U.S.C. § 248)



YOUR RIGHTS ON ARREST

WHAT SHOULD I EXPECT IF I'M ARRESTED AT A PROTEST?

It depends what you're arrested for. Under California law there are three different types of offenses: infractions, such as jaywalking or failing to yield to traffic in the street; misdemeanors, such as obstructing an officer or disturbing the peace; and felonies, such as assaulting an officer, freeing a prisoner, or vandalism causing more than \$400 in damage.

INFRACTIONS: For almost all infractions, if you can show a government-issued ID, the police must give you a ticket (formally known as a "promise to appear") and release you on the spot unless you refuse to sign the ticket.³²

MISDEMEANORS: The police will usually take you to the station to be fingerprinted and photographed, but they should release you if you have identification and you sign a promise to appear. One exception to this rule is if the officer has reason to think that you will resume breaking the law if you're released.³³

FELONIES: The police may keep you in jail, but you have a right to bail immediately. If you don't bail out, within 48 hours a judge will review the police reports to see whether they show any criminal act.³⁴ You must be seen in court within two business days to be informed as to whether you're being charged with a crime.³⁵

Many people arrested at protests are never charged and are released without going to court. *If you aren't ever charged, you haven't technically been arrested.* The police department should issue you a certificate saying you were merely detained.³⁶

If you're arrested in a federal facility or national park, or in some other situation where federal law applies, the process will be different.

KNOW YOUR RIGHTS:

- ◆ You have the right to remain silent. Use it. You must give your name and address but don't say anything else.
- ◆ You have the right to legal counsel. Ask for an attorney. Don't discuss your case with the police without consulting your attorney.
- ◆ You have the right to make three free local phone calls immediately after being booked and no later than three hours after arrest. A parent with custody of a minor child may make two additional calls to arrange for childcare.³⁷
- ◆ If you remain in custody, a judge will review your case within 48 hours and you must be taken to court within two business days.³⁸

For more information, see www.aclunc.org/policepractices.



LIMITS TO POLICE POWER

WHEN CAN THE POLICE BREAK UP A PROTEST OR DEMONSTRATION?

The police are charged with safeguarding the public during a demonstration, but they can't use their powers to stop you from exercising your free-speech rights. As long as you're observing reasonable time, place and manner restrictions, the police may not break up a gathering unless there is a "clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety . . ." ³⁹ And police officers may not use their powers in a way that has a "chilling effect" on ordinary people who wish to express their views.

WHEN CAN THE POLICE USE FORCE? HOW MUCH FORCE IS LEGITIMATE?

The police may use reasonable force to break up a gathering or to detain or arrest a person who is violating the law. What is "reasonable" depends on all the circumstances. This gives the police some leeway while prohibiting force that any trained officer should know is excessive.

ARE THERE CONSTITUTIONAL LIMITS TO POLICE INTELLIGENCE-GATHERING AND SURVEILLANCE OF POLITICAL ACTIVISTS?

Overly intrusive and unnecessary police spying and intelligence gathering activities may violate constitutional guarantees of freedom of speech or privacy if it is targeting groups or individuals engaged in First Amendment activity absent some connection to suspected criminal activity. In 2003, Attorney General Bill Lockyer issued a manual entitled "Criminal Intelligence Systems: A California Perspective," adopting a position that the ACLU has advocated in the courts and to local government bodies: the state constitutional right to privacy requires that the police need an articulable criminal predicate to justify surveillance or intelligence gathering, particularly of groups or individuals engaged in expressive activities

CAN UNIFORMED OFFICERS TAKE PHOTOGRAPHS OR GATHER INFORMATION AT A PROTEST?

Yes. The police may lawfully photograph or videotape events that are open to the public. However, California's right to privacy prohibits state and local officials from maintaining unnecessary information about the people of our state, so tapes that do not show any unlawful conduct should be destroyed. ⁴⁰

CAN THE POLICE DEMAND THAT PROTESTERS REMAIN INSIDE A 'FREE-SPEECH ZONE'?

Sometimes. For the government to restrict protesters to a certain space—or to keep them from a space that's otherwise open—it must follow the usual rules regarding time, place and manner: Restrictions must be reasonably related to legitimate goals such as reducing an identifiable security risk, they mustn't prevent substantially more expression than is necessary to achieve those goals, and they mustn't be motivated by the protesters' message. The restrictions must also allow protesters to have a reasonable opportunity to effectively communicate their message to their intended audience. ⁴¹



SNAPSHOTS IN HISTORY

THE CHILLING EFFECT: LIMITING POLICE POWER

DATE: 2003

LOCATION: PORT OF OAKLAND, CALIF.

AT ISSUE: It was a peaceful anti-war protest—until the police tried to break it up. They opened fire with wooden dowels, sting-ball grenades and shot-filled bean bags, scattering terrified protesters, dockworkers and passers-by, and wounding more than 50 people. The ACLU, civil rights and labor groups including the International Longshore and Warehouse Union filed suit, charging that the excessive use of force violated protesters' free-speech rights and had a chilling effect on the speech of others.

RESULT: In an out-of-court settlement, the Oakland Police Department agreed to a new crowd-control policy, which bans the use of these types of weapons against demonstrators. This settlement makes Oakland the first city in the nation where demonstrators do not risk serious injury from these weapons when they exercise their free-speech rights.

Film

ACLU

SNAPSHOT IN HISTORY:

IF A PROTEST FALLS IN THE FOREST: FREE SPEECH ZONES CHALLENGED

DATE: 1996

LOCATION: SAN DIEGO, CALIF.

AT ISSUE: When Republican National Convention organizers insisted that protestors be relegated to a distant site across a set of trolley tracks that was partially obscured by a vacant building, the ACLU of San Diego and the National Organization for Women argued that the real intent was to stifle the protestors' message and impact.

RESULT: In one of the nation's first "free speech zone" cases, the district court ruled that protestors must be able to be seen and heard, rejecting the convention managers' claims that they were primarily interested in establishing a drop-off area for disabled delegates.

Film

ACLU

LOCATION

PUBLIC PROPERTY

WHAT'S THE BEST LOCATION FOR MY FREE-SPEECH ACTIVITY?

Although the First Amendment gives you the right to decide where best to express yourself, your right to exercise your free-speech rights may hinge upon exactly *where* you choose to exercise those rights. The U.S. Supreme Court uses a *Federal Forum Analysis* to determine what kinds of speech are appropriate in which publicly owned locations:⁴²

- a. **Traditional Public Forums:** Is it a sidewalk, a street or a public park? If the answer is yes, you're holding your protest at a traditional public forum, where speech may *only* be restricted through reasonable time, place and manner restrictions.⁴³
- b. **Designated Public Forums:** Other spaces may receive the same protection as traditional forums because the government has opened them up to be used for speech activities. Once the government treats a public venue as available to *some* for non-commercial speech, it must be made available to *all*. Common examples of designated public forums include public auditoriums, the steps of city hall and plazas in front of public buildings.⁴⁴
- c. **Non-Public Forums:** In other venues, your rights are less clearly protected. At military bases, airport terminals, or the entrance to a post office, for example, *reasonable* prohibitions and restrictions may be upheld, as long as they are objectively applied and do not favor one side of an issue over the other. The government cannot discriminate based on viewpoint, even in a non-public forum.⁴⁵

HOW ARE FREE SPEECH LOCATIONS ASSESSED UNDER STATE LAW?

California courts sometimes use the federal forum analysis to evaluate limits on speech on public property, but they have also used another test—the "basic incompatibility" test. Under that test, expressive activity on government property may only be prohibited if the speech is incompatible with the normal activity of the venue. What does that mean in the real world? It means leafleting at a train station or a prison parking lot may be approved, while forcing nurses to weave around solicitors inside a hospital ward will not be. Relevance matters, too: the courts are more likely to give the nod to a location when it is an actual or symbolic target of your protest.

SCHOOLS, UNIVERSITIES, MEDICAL CENTERS AND HOUSES OF WORSHIP

CAN PUBLIC UNIVERSITIES OR COLLEGE CAMPUSES RESTRICT PROTESTS?

You should be allowed to protest on the outdoor streets and plazas of public college and university campuses, subject to reasonable time, place, or manner restrictions. A public college cannot allow protests on one side of an issue but prohibit protests on the other side. But it may restrict speech activities that unduly interfere with classes.⁴⁶

CAN MY HIGH SCHOOL RESTRICT MY FREE-SPEECH RIGHTS?

In California, your free-speech rights are fully protected in school, as well as outside.⁴⁷ Your school may not censor or punish you because of the *content* of your speech—unless what you say is obscene, libelous, likely to incite material disruption or violation of school rules, or is deemed a “true threat.” Schools may not stop you from discussing a controversial topic, writing for the school newspaper or criticizing school rules, but they can require you to obey reasonable, non-content-based regulations. A school can’t ban a T-shirt that reads “No War in Iraq” but allow one that says “Support Our Troops,” for example.

SNAPSHOTS IN HISTORY ONLY IN CALIFORNIA: FREE SPEECH AS A STATE RIGHT

DATE: 1979

LOCATION: PRUNEYARD SHOPPING CENTER,
SAN JOSE, CALIF.

AT ISSUE: When a group of high-school students took to the walkways of a privately-owned shopping mall with a petition soliciting support for a United Nations resolution, it didn’t take long for security guards to eject them. The students took the owner of the mall to court, launching a legal tug-of-war that pitted property rights against Californians’ free-speech rights.

RESULT: In a delicate balancing act, the California Supreme Court found that the freedom of speech guaranteed by the California Constitution does apply to large privately-owned shopping malls—as long as free-speech activities do not interfere with normal business operations. By upholding this decision, the U.S. Supreme Court established a fundamental principle: State constitutions may guarantee greater protections for freedom of speech than the U.S. Constitution.

SNAPSHOTS IN HISTORY OUTSIDE THE CLINIC: REASONABLE TIME, PLACE AND MANNER RESTRICTIONS

DATE: 2000

LOCATION: COLORADO

AT ISSUE: Following violent confrontations between anti-abortion protesters and prospective patients, the state of Colorado banned protesters from holding a sign, passing out literature, or attempting to engage in discussion with another person within 100 feet of a health-care facility. Pro-life activists challenged the law, arguing that it violated their First Amendment Rights.

THE RESULT: The U.S. Supreme Court upheld the law, stressing that this time, place, manner restriction served to protect an important interest: the safety and well-being of patients and health-care workers.⁴⁸

CAN I ORGANIZE A PROTEST AT MY SCHOOL?

Yes. However, the school may require you to observe reasonable time, place and manner regulations, such as holding your protest before or after class, and in a safe location that doesn’t block entries and exits.

CAN I SKIP SCHOOL FOR A WALKOUT OR PROTEST?

Since the law requires you to attend school, you may be punished for skipping class. The school can’t punish you for your views, however, and the consequences should be the same as if you skipped school for any other unauthorized reason.

To learn about your rights at school, call your school district and ask for their regulations on free-speech activity, or visit the website of the ACLU in your area: www.aclunc.org (Northern California), aclu-sc.org (Southern California) or aclusandiego.org (San Diego).

ARE THERE SPECIAL RULES FOR MEDICAL CENTERS OR PLACES OF WORSHIP?

Yes. You may not physically obstruct or intentionally interfere with the staff members, patients, or building of a medical clinic offering reproductive health services.⁴⁹ These statutes also apply to houses of worship. In addition, some cities have “bubble ordinances” that bar demonstrators from approaching patients without permission within 100 feet of a health care facility.⁵⁰ Check your local regulations to learn more.

PRIVATE PROPERTY

CAN I PROTEST ON PRIVATE PROPERTY?

As a rule, the First Amendment doesn't give you the right to engage in free-speech activities on private property unless you own or lease the property, or the owner has given you permission to use the property for speech. But you may canvass door-to-door in residential areas, unless the homeowner has put up a "no solicitors" sign.⁵¹

DO SHOPPING MALLS COUNT AS PRIVATE PROPERTY?

Shopping malls are an exception to the rule. In California, the courts recognize big malls as the modern-day "functional equivalent" of a traditional public gathering place, because they have "common areas that would invite the public to meet, congregate, or engage in other activities typical of a public forum. . . ."⁵² The California Constitution *does* protect your free-speech rights in privately owned shopping centers—as long as your activity doesn't interfere with the primary commercial purpose of the mall.

WHAT ABOUT THE PRIVATE WALKWAYS AND PARKING LOTS IN FRONT OF "BIG BOX" STORES AND HOTELS?

The shopping center rule doesn't apply to private property areas that fail the "functional equivalent" test, such as parking lots and walkways of medical office buildings and hotels, or private walkways and parking lots in front of free-standing stores like Trader Joe's or Costco.⁵³

CAN SHOPPING CENTERS REGULATE MY EXPRESSIVE ACTIVITIES?

Yes. The courts have approved a slew of "reasonable" time, manner and place regulations, some of which present obstacles for effective communication. Most large malls have rules restricting free speech activities, although the California Supreme Court's recent decision in *Fashion Valley Mall v. N.RB* calls into question some of these restrictions.⁵⁴ The Court invalidated a rule that prohibited a union from handing out leaflets at a San Diego mall calling for a boycott of a particular store, finding that the union's interest in getting its message across outweighed the economic interests of the mall.⁵⁵

WHAT IF I VIOLATE A SHOPPING CENTER'S RULES?

If you exercise your free-speech rights in violation of these rules, you may be excluded from the mall. However, you should not be arrested for trespass under state law in an area that's open to the public unless you intentionally interfere with the establishment's business, for example, by obstructing or intimidating its customers.⁵⁶

RESTRICTIONS IN SHOPPING CENTERS

The courts have made it clear that shopping centers can and should adopt written "reasonable" rules and regulations for free speech activity. Most large shopping malls have adopted a set of written regulations, which are available at the center's offices. The standard for what is a "reasonable" shopping center rule is the same as the standard for the government regulating speech in a public forum—the rule must be content-neutral and narrowly tailored and leave open alternative avenues of communication.⁵⁷

The court decisions applying this standard have not been consistent, so the state of the law is unclear at this time. Many of the large shopping centers adopted rules that were complicated and burdensome to advocacy groups, but many of these rules were upheld in state court decisions.⁵⁸ Such rules included:

- ◆ Requiring a permit in advance to give the center prior notice of the activity
- ◆ Limiting free speech activity to designated free speech areas (usually 2 or 3)
- ◆ Imposing strict limits on the number of participants (usually 2 or 3)
- ◆ Requiring advance approval of signs and literature
- ◆ Prohibiting all free speech activity during certain busy periods (e.g. Thanksgiving to Christmas)
- ◆ Prohibiting direct solicitation of any monetary donations

A more recent federal court decision, relying on the California Supreme Court's ruling in the Fashion Valley case, rejected the reasoning of these state court decisions, thus calling into question many of these same rules. The court specifically rejected the following rules as either impermissible content discrimination or as not narrowly tailored.⁵⁹

- ◆ Prohibition on speech activities that identify or single out the mall or a mall tenant by name (e.g. content-based)
- ◆ Prohibition on the carrying or wearing of signs, including picket signs
- ◆ Prohibition on any activity on the exterior walkways
- ◆ Ban on activities during holiday periods



ENDNOTES

- 1 See *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 761, 764, 774 (1985) (five members agreed that the First Amendment permits an award of presumed or punitive damages for false and defamatory statements of purely private concern without showing actual malice); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 343, 345-46, 347 (1974) (holding that the First Amendment permits a private figure in a libel action to recover damages without showing actual malice). *But see Garrison v. Louisiana*, 379 U.S. 64, 75 (1964) (noting that a state may punish a person for making a knowingly false statements about a public official); *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 283-84 (1964) (holding that the First Amendment requires actual malice to award damages in a libel action brought by a public official).
- 2 *Miller v. California*, 413 U.S. 15, 20-21, 23 (1973) (quoting *Roth v. United States*, 354 U.S. 476 (1957)).
- 3 *Virginia v. Black*, 538 U.S. 343, 347-48, 359-60 (2003) (plurality).
- 4 *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).
- 5 *Id.* at 447 (emphasis added).
- 6 See *Cox v. Louisiana*, 379 U.S. 536, 550-51 (1965) (quoting *Watson v. Memphis*, 373 U.S. 526, 535 (1963)); *Ovadal v. City of Madison*, 416 F.3d 531, 537 (7th Cir. 2005) (“The police must permit the speech and control the crowd; there is no heckler’s veto”) (quoting *Hedges v. Wauconda Cmty. Unit Sch. Dist. No. 118*, 9 F.3d 1295, 1299 (7th Cir. 1993)).
- 7 See *Forsyth County, Ga. v. Nat’list Movement*, 505 U.S. 123, 130 (1992); *Kuba v. 1-A Agric. Ass’n*, 387 F.3d 850, 857-58 (9th Cir. 2004) (California Constitution).
- 8 *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1039, 1040-43 (9th Cir. 2006) (“SMFNB”).
- 9 See *SMFNB*, 450 F.3d at 1039, 1040-43; *American-Arab Anti-Discrimination Committee v. City of Dearborn*, 418 F.3d 600, 608 (6th Cir. 2005).
- 10 See *Long Beach Area Peace Network*, 2009 WL 2195354, at *22-*24; *NAACP v. City of Richmond*, 743 F.2d 1346, 1356-57 (9th Cir. 1984).
- 11 *Forsyth County*, 505 U.S. at 134-35.
- 12 See *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 769-70 (1988). ; *Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality, Repression and Crim. of a Generation v. City of Seattle*, 550 F.3d 788, 798-803 (9th Cir. 2008) (“Seattle Affiliate”).
- 13 *People v. Gonzalez*, 910 P.2d 1366, 1374, 1375, 1378 (Cal. 1996); *In re Berry*, 436 P.2d 273, 279-80 (Cal. 1968).
- 14 *Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality, Repression and Crim. of a Generation v. City of Seattle*, 550 F.3d 788, 800-801 (9th Cir. 2008); *see also* Cal. Code Civ. Pro. § 1094.8(d).
- 15 *Bay Area Peace Navy v. U.S.*, 914 F.2d 1224, 1229 (9th Cir. 1990).
- 16 *U.S. v. Baugh*, 187 F.3d 1037, 1043-44 (9th Cir. 1999); *see also Collins v. Jordan*, 110 F.3d 1363, 1371-72 (9th Cir. 1996) (noting that the generally accepted way of addressing unlawful conduct that may be intertwined with First Amendment activity is to punish it after it occurs rather than prevent the First Amendment activity from occurring).

- 17 *Baugh*, 187 F.3d at 1043.
- 18 *Forsyth County v. Natlist Movement*, 505 U.S. 123, 136 (1992); see also *Santa Monica Food not Bombs v. City of Santa Monica*, 450 F. 3d 1022, 1049 (9th Cir. 2006) (recognizing this limitation but finding the fees at issue constitutional).
- 19 See *Nemo v. City of Portland*, 910 F. Supp. 491, 495-96 (D. Or. 1995); *Long Beach Lesbian and Gay Pride, Inc.*, 14 Cal. App. 4th at 335-36 (recognizing that fees must be narrowly tailored to serve a significant governmental interest, but finding that requirement met with respect to the fees at issue).
- 20 See *Central Fla. Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515, 1523-24 (11th Cir. 1985); *Nemo*, 910 F. Supp. at 497-98.
- 21 See *Long Beach Lesbian and Gay Pride, Inc.*, 14 Cal. App. 4th at 337-38, 342; *Gerritsen v. City of Los Angeles* 994 F.2d 570, 578-79 (9th Cir. 1993)(upholding performance bond for liability insurance for use of park band stand).
- 22 *Kovacs v. Cooper*, 336 U.S. 77, 87 (1949); see also *Saia v. New York*, 334 U.S. 558, 562 (1948 (striking down an ordinance that permitted police to bar the use of loud-speakers entirely, while recognizing that the government may regulate sound levels)); *Stokes v. City of Madison*, 930 F.2d 1163, 1168-69, 1172-73 (7th Cir. 1991) (acknowledging this principle but upholding the regulation); *Maldonado v. Monterey County*, 330 F. Supp. 1282, 1286 (N.D. Cal. 1971) (holding the “absolute prohibition of the use of loudspeaking equipment on the public roadways . . . unconstitutional”).
- 23 See *Schneider v. New Jersey*, 308 U.S. 147, 164-65 (1939); *In re Hoffman*, 434 P.2d 353, 354, 356-57 (Cal. 1967). In *Hill v. Colorado*, 530 U.S. 703, 707-08, 725, 730, 732, 735 (2000), the U.S. Supreme Court upheld a state law that protected persons entering abortion clinics by establishing eight foot “floating buffer zones” around persons entering a medical facility. The Court’s opinion is based largely on the particular vulnerability of people seeking medical attention and the need to allow unimpeded access to health-care facilities, as well as its view that the law did not prohibit handing a leaflet to a person willing to take it. *Id.* at 728-29, 734-35.
- 24 See *Watchtower Bible and Tract Soc’y of New York v. Village of Stratton*, 536 U.S. 150, 153, 165-66, 169 (2002); *Marsh v. Alabama*, 326 U.S. 501, 504 (1946); *Lovell v. City of Griffin*, 303 U.S. 444, 451-52 (1938).
- 25 See *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 792 (9th Cir. 2006) (“solicitation is a form of expression entitled to the same constitutional protections as traditional speech”); *Berger v. City of Seattle*, 569 F. 3d 1029, 1050-53 (9th Cir. 2009).
- 26 *Int’l Soc. for Krishna Consciousness v. Lee*, 505 U.S. 672 (1992) (upholding ban on solicitation in an airport terminal); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 795 (9th Cir. 2006).
- 27 *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 792-96 (9th Cir. 2006).
- 28 See *City of Lakewood v. Plain Dealer Publ’g Co.*, 486 U.S. 750, 752, 772 (1988) (newsracks); *ACLU of Nevada v. City of Las Vegas*, 466 F.3d 784, 786 (9th Cir. 2006) (table).
- 29 See *McGary v. City of Portland*, 386 F.3d 1259, 1269-70 (9th Cir. 2004).
- 30 *Texas v. Johnson*, 491 U.S. 397, 399 (1989); *id.* at 429 (Rehnquist, C.J., dissenting).
- 31 Cal. Lab. Code § 432.7 (Deering 2009).
- 32 Cal. Pen. Code § 853.5(a) (Deering 2009).
- 33 Cal. Pen. Code § 853.6(i)(7)
- 34 *County of Riverside v. McLaughlin*, 500 U.S. 44, 56, 58-59 (1991).
- 35 Cal. Pen. Code § 825.
- 36 Cal. Pen. Code §§ 849.5, 851.6.
- 37 Cal. Pen. Code § 851.5.
- 38 Cal. Pen. Code § 825; *accord McLaughlin*, 500 U.S. at 56, 58-59.
- 39 *Papineau v. Parmley*, 465 F.3d 46, 56-57 (2d Cir. 2006) (internal quotations omitted).
- 40 See Cal. Const. art. I, § 1 (recognizing a right to privacy); *White v. Davis*, 533 P.2d 222 (Cal. 1975).
- 41 See, e.g., *Bay Area Peace Navy v. United States*, 914 F.2d 1224, 1227, 1229 (9th Cir. 1990).
- 42 For a summary of this doctrine, see *Pleasant Grove City v. Summum*, 129 S.Ct. 1125, 1132 (2009).
- 43 *Summum*, 129 S.Ct. at 1132.
- 44 The steps of city hall and public plazas may also constitute traditional public fora. See *Pouillon v. City of Owosso*, 206 F.3d 711, 716-17 (6th Cir. 2000).
- 45 *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45-46 (1983).
- 46 *Grayned v. City of Rockford*, 408 U.S. 104, 117-18 (1972).
- 47 Cal. Educ. Code § 48907 (Deering 2009).
- 48 *Hill v. Colorado*, 530 U.S. 703 (2000).
- 49 18 U.S.C. § 248 (2006); Cal. Pen. Code § 423.2 (Deering 2009).
- 50 For example, see Oakland, Cal. Municipal Code § 8.52 (2008). Although the U.S. Supreme Court has upheld one such floating buffer zone, laws that go beyond the one at issue in that case may well be unconstitutional. Compare *Hill v. Colorado*, 530 U.S. 703 (2000) (upholding 8-foot floating buffer) with *Schenck v. Pro-Choice Network Of Western New York*, 519 U.S. 357, 361, 377, 380 (1997) (striking down 15-foot court-ordered floating buffer as burdening substantially more speech than necessary, but upholding 15-foot foxed buffer).
- 51 See *Watchtower Bible and Tract Soc’y of New York v. Village of Stratton*, 536 U.S. 150, 165-66 (2002); *Project 80’s, Inc. v. City of Pocatello*, 942 F.2d 635, 636, 638-39 (9th Cir. 1991); *Van Nuys Publ’g Co. v. City of Thousand Oaks*, 489 P.2d 809, 812-15 (Cal. 1971). The government may prohibit demonstrators that are targeting a particular person from standing directly in front of that person’s residence. See *Frisby v. Schultz*, 487 U.S. 474, 482-83, 488 (1988). Lower courts are divided as to how far a law can push protesters away from a residence. Compare *City of San Jose v. Superior Court*, 32 Cal. App. 4th 330, 339, 341, 343 (1995) (upholding 300-foot buffer zone) with *Klein v. San Diego County*, 463 F.3d 1029, 1034-37 (9th Cir. 2006) (suggesting that government may only prohibit protesters from being directly in front of residence).
- 52 *Albertson’s, Inc. v. Young*, 107 Cal. App. 4th 106, 122 (2003); see *Robins v. Pruneyard Shopping Ctr.*, 592 P.2d 341, 344 (Cal. 1979), *aff’d by Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980).

- 53 See, e.g., *Alfred v. Harris*, 14 Cal. App. 4th 1386, 1388, 1392 (1993); *Trader Joe's Co. v. Progressive Campaigns, Inc.*, 73 Cal. App. 4th 425, 433-34 (1999); *Costco Co. v. Gallant*, 96 Cal. App. 4th 740, 755 (2002).
- 54 *Fashion Valley Mall, LLC v. NLRB*, 172 P.3d 742, 752-54 (Cal. 2007).
- 55 *Id.*
- 56 *Hamburg v. Wal-Mart Stores, Inc.*, 116 Cal. App. 4th 497, 509 (2004).
- 57 *Fashion Valley*, 42 Cal. 4th at 864-866 (California Supreme Court struck down content based shopping center rule that prohibited speech urging a boycott of one of the tenant stores)
- 58 *Union of Needle Trades v. Superior Court*, 56 Cal. App. 4th 996 (1997); *H-CHH Assoc. v. Citizens for Representative Gov't.*, 193 Cal. App. 3d 1193 (1987).
- 59 *United Brotherhood of Carpenters and Joiners of America v. NLRB*, 540 F. 3d 957 (9th Cir. 2008, cert. den., 130 S.Ct. 553 (2009)).



SPECIAL THANKS TO THE WRITERS WHO MADE THIS PUBLICATION POSSIBLE

MICHAEL RISHER is a staff attorney at the ACLU-NC.

ALAN SCHLOSSER is the legal director at the ACLU-NC.

RACHEL SWAIN is a communications consultant, writer, and former communications director at the ACLU-NC.





ACLU OF NORTHERN CALIFORNIA: WWW.ACLUNC.ORG
ACLU OF SOUTHERN CALIFORNIA: WWW.ACLU-SC.ORG
ACLU OF SAN DIEGO & IMPERIAL COUNTIES: WWW.ACLUSANDIEGO.ORG