

RACIAL JUSTICE DEMONSTRATIONS IN THE TIME OF COVID: KNOW YOUR RIGHTS

In response to the police killings of George Floyd and other Black people across America, the residents of Massachusetts, like so many across the country, are holding demonstrations in public parks and streets.

People not necessarily connected to the demonstrations for racial justice have caused property damage during or after these demonstrations. Moreover, these demonstrations are occurring during the COVID-19 pandemic.

Some MA communities and law enforcement officials are trying to use these circumstances to intimidate racial justice demonstrators from exercising their rights to free speech. Such attempts at intimidation may violate the law.

This Guidance supplements our existing Guidance on Demonstrations and Protests, https://www.aclum.org/sites/default/files/field_documents/shortened_protest_kyr_6.1.18.pdf, and is intended to assist those who wish to exercise their free speech rights in these historic times, while following public health orders.

1. Do you need a permit (or to provide advance notice) for a demonstration that is time-sensitive?

- It depends on various case-by-case factors and the government rules that apply to where you want to protest.
- The First Amendment prohibits governments (including police) from applying permit or notice requirements that create unreasonable barriers to spontaneous demonstrations - demonstrations responding to time-sensitive, current events - without a very good reason.
- If your protest will close off the streets to traffic, that may be a good reason for police to require a permit or advance notice, because they legitimately need to plan

for traffic control. But even where streets will need to be closed, courts have held that requiring you to apply for a permit or give advance notice may violate the First Amendment, particularly if demonstration is time-sensitive. ¹

- If your event is going to be in a public park, where any member of the public generally is allowed to go, the government has even less justification for requiring you to have a permit or to pay fees for the right to be there. ² The government is less likely to be able to prove that a permit or notice was required if you do not expect a large number of people to join in your demonstration.
- Government cannot lawfully use the excuse that they need time to set up security based on expected conduct of counter-protestors or others who are not part of your demonstration. That is not consistent with the First Amendment, which protects you from being held responsible for the conduct of people who are not part of your demonstration or over whom you do not have control. ³
- So, requirements for permits or more than a few hours advance notice should not be imposed if they will interfere with a spontaneous demonstration, particularly if the demonstration will be in a public park.

2. Do restrictions due to the COVID pandemic mean demonstrations are not allowed?

- No.
- In Massachusetts, outdoor demonstrations in unenclosed spaces are allowed regardless of how many people are involved.
- But you are required to keep at least 6 feet apart from other people or wear a face covering. Doing BOTH is a very good idea for public health.
- On these issues, the state order bars local orders that are different from being applied. ⁴
- Further, there is no statewide curfew in effect due to COVID, only an advisory and not mandatory curfew in many cities, like Boston, and our state supreme court has ruled that curfews are often illegal, particularly if they apply to adults. ⁵

3. What if your community denies you the right to demonstrate for racial justice when it has allowed others to demonstrate on other causes under similar circumstances?

- The First Amendment forbids government from treating speakers differently based on the content of their message, so if your community has allowed similar events with

¹ See *Sullivan v. City of Augusta, Me.*, 511 F.3d 16, 38-41 (1st Cir. 2007) (even with regard to street-closing parades, advance notice requirements unconstitutional because do not allow for spontaneous demonstrations).

² See our legal papers in this case about the broad rights afforded to protest in public parks:
<https://www.aclum.org/en/cases/massachusetts-peace-action-v-city-cambridge>

³ See papers in note 2.

⁴ https://www.aclum.org/sites/default/files/field_documents/know_your_rights_covid_19.pdf.

⁵ <http://masscases.com/cases/sjc/455/455mass24.html>

a different message in the past, denying you your rights is likely a violation of the First Amendment – as well as perhaps unlawful racial discrimination.

4. What should you do if the police, your city or town, or State officials say you cannot have your demonstration in a park because you do not have a permit or that they do not have time to set up security or that COVID restrictions prevent it, or that there is too much risk that others will cause property damage or violence?

- You can show them the law and materials discussed above and try to convince them to change their position.
- You can tell them that if they do not let you have your spontaneous demonstration they may owe you damages or attorneys' fees under federal civil rights law and the Massachusetts Civil Rights Act, G.L. c. 12, §§11H, I.
- You can attempt to go ahead peacefully with your demonstration, but avoid getting into any physical confrontation with the police and do not block vehicle or pedestrian traffic.
- You can openly videotape your peaceful conduct (including signs showing the message you are trying to express), as well as the efforts of police to stop you from having your peaceful demonstration, to be used later as evidence or for public awareness.
- You can contact the Attorney General's Office Civil Rights Division at 617- 963-2917.
- You can contact the ACLU of Massachusetts to report the problems you are having at legalhelp@aclum.org or 617-482-3170 ext. 301.

WE CALL UPON ALL MASSACHUSETTS STATE AND LOCAL OFFICIALS TO PROTECT DEMONSTRATORS' RIGHTS TO FREE SPEECH!

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MA