



KNOW YOUR RIGHT TO PROTEST IN CHICAGO

May 2012

Introduction

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 U.S. Constitution, First Amendment

All persons may speak, write and publish freely, being responsible for the abuse of that liberty. In trials for libel, both civil and criminal, the truth, when published with good motives and for justifiable ends, shall be a sufficient defense. . . . The people have the right to assemble in a peaceable manner, to consult for the common good, to make known their opinions to their representatives and to apply for redress of grievances.

The Illinois Constitution, Article I, Sections 4 and 5

The right to protest in public places is fundamental to who we are as a free and democratic people. Protest in public places is one of our most important tools to ensure government accountability, and to advance shared visions of a better society. Chicago has a long and vigorous tradition of protest, from the marches led by the Rev. Martin Luther King, Jr. in 1966 in many of our neighborhoods in support of equal housing opportunity, to the large and small demonstrations today for and against myriad causes in our downtown streets, sidewalks, and parks. Our right to protest is well protected by both the First Amendment to the U.S. Constitution, and by additional guarantees of the Illinois Constitution.

This ACLU of Illinois report is a “user’s manual” for people exercising their right to protest in public places in the City of Chicago. This report provides general information only; when in doubt regarding your legal rights, you should consult a lawyer.

Part I explains some basics: the right to protest is deeply woven into the fabric of our federal and state constitutions; government cannot discriminate against protesters based on their viewpoint; government can prohibit narrowly defined incitement, threats, and fighting words; government must accommodate counter-protesters; and government cannot silence protests because of an audience's violent opposition. Part II discusses when government can require a permit to protest. Part III addresses other government regulations of the time, place, and manner of protest. The violation of these regulations can give rise to arrest and prosecution under various Illinois statutes and Chicago ordinances. Part IV briefly discusses civil disobedience. Part V lists your rights if you are stopped or arrested by police during a protest. Part VI addresses police spying on protest activity. Part VII presents the particular locations in Chicago commonly used for protests, including the varying permit processes and other rules.

I. Overview of the fundamental right to protest

A. Constitutional protection of the right to protest

Our fundamental right to protest receives great protection from all five clauses of the First Amendment. Protest manifestly is part of our “freedom of speech,” of “the right of the people peaceably to assemble,” and of our right “to petition government for a redress of grievances.” For some groups, protest is also an expression of “the free exercise” of religion. The “freedom of the press” clause protects the right of all people, professional journalists and others alike, to gather and publish information about protests.

Further, implicit in the First Amendment is a well-protected right to expressive association, that is, a right to join together with likeminded persons to collectively express a shared message, by means of protest or otherwise.¹ According to the U.S. Supreme Court, “the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process.”²

The First Amendment provides special protection for protest concerning the performance of government officials and other matters of public concern,³ and for protest in public forums.⁴ The right to protest in public places includes large gatherings (like parades in the streets and rallies in

¹ See, e.g., Hurley v. Irish-American GLB Group, 515 U.S. 557 (1995); NAACP v. Button, 371 U.S. 415 (1963).

² NAACP v. Claiborne Hardware Co., 458 U.S. 886, 907 (1982).

³ See, e.g., Snyder v. Phelps, 131 S. Ct. 1207, 1215 (2011) (“speech on public issues occupies the highest rung of the hierarchy of First Amendment values”); Butterworth v. Smith, 494 U.S. 624, 632 (1990) (“information relating to alleged governmental misconduct . . . has traditionally been recognized as lying at the core of the First Amendment”); New York Times Co. v. Sullivan, 376 U.S. 254, 269 (1964) (the First Amendment guarantees the “unfettered interchange of ideas for the bringing about of political and social changes desired by the people”).

⁴ See, e.g., Boos v. Barry, 485 U.S. 312, 318 (1988) (protecting speech on sidewalks abutting foreign embassies, because public forums, “time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions”), quoting Hague v. CIO, 307 U.S. 496, 515 (1939); United States v. Grace, 461 U.S. 171, 180 (1983) (protecting speech on sidewalks abutting the U.S. Supreme Court, because “[t]raditional public forum property occupies a special position in terms of First Amendment protection”).

parks), small gatherings (like pickets on sidewalks and vigils on government plazas), and solitary expression (like one person holding a sign or distributing leaflets).

The Illinois Constitution guarantees to the general public the rights to “speak,” to “assemble,” to “consult for the common good,” to “make known their opinions to their representatives,” and “to apply for redress of grievances.” These state constitutional guarantees are even more protective of speech than their federal counterparts.⁵

B. The general rule: no regulation of messages

With very few exceptions, government cannot limit protest on public property because of the protest’s viewpoint. Rather, government must be neutral among messages and messengers. Protests can be controversial, unpopular, offensive, or even hateful. Protesters can speak in support of illegal activity, violence, or even the overthrow of our government. Over time, the best way to protect speakers we like is to protect speakers we don’t like – such as the neo-Nazis who sought to protest in Chicago’s Marquette Park in the 1970s.

C. Three exceptions: incitement, threats, and fighting words

The First Amendment does not protect a few narrow categories of expression. Most importantly here, the First Amendment does not protect “incitement,” meaning speech intended and likely to cause imminent law-breaking. For example, the First Amendment does not protect a speaker who urges an angry crowd to immediately attack someone or destroy their property. Also, the First Amendment does not protect “true threats” directed against a particular person who would reasonably perceive in the message a danger of violence.⁶

“Fighting words” are also unprotected. These are words directed at a particular person, face-to-face, which might provoke an ordinary reasonable person to violence, such as by calling them an offensive name and then “clucking like a chicken.”⁷ This narrow category of speech does not include political messages directed at a general audience, even if especially inflammatory, such as flag burning, or displaying a swastika at a neo-Nazi rally in a Jewish community, or wearing a

⁵ Village of South Holland v. Stein, 373 Ill. 472, 479 (1940) (the Illinois Constitution is “even more far-reaching . . . in providing that every person may speak freely”); Montgomery Ward & Co. v. United Store Employees, 400 Ill. 38, 46 (1948) (the Illinois Constitution “is broader”); Sixth Ill. Constl. Convn., Pr. at 1403 (statement of Delegate Gertz, the chair of the Bill of Rights Committee, that the Illinois free speech clause would provide “perhaps added protections”); People v. DeGuida, 152 Ill. 2d 104, 122 (1992) (“we reject any contention that free speech rights under the Illinois Constitution are in all circumstances limited to those afforded by the Federal Constitution”).

⁶ Brandenburg v. Ohio, 395 U.S. 444 (1969) (incitement); NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982) (threats).

⁷ Cohen v. California, 403 U.S. 15, 20 (1971) (defining fighting words as “a direct personal insult” that is “directed to the person of the hearer”); Chaplinsky v. New Hampshire, 315 U.S. 568, 573 (1942) (defining fighting words as provoking “the person to whom, individually, the remark is addressed” during a “face-to-face” confrontation); Gower v. Vercler, 377 F.3d 661, 670-71 (7th Cir. 2004) (holding that clucking and certain offensive words and actions comprised fighting words).

jacket bearing the words “fuck the draft” in a courthouse.⁸ On the other hand, an especially provocative and angry face-to-face shouting match between a protester and a bystander might be seen by a police officer as fighting words and thus give rise to arrest.

Abusive words are less likely to be unprotected “fighting words” if they are directed at police officers, who are expected to exercise greater self-restraint, due to their office and training.⁹ As a practical matter, however, protesters will usually be best served by speaking respectfully to everyone, including police officers.

D. Counter-protest

When one group disagrees with the message of another group, the First Amendment protects the right to counter-protest at the site of a protest. Police must ensure that the two opposing groups do not silence or harm each other. Police may do so by separating the opposing groups, but should allow them to be in the same general vicinity.

The First Amendment also protects the right of an individual or small group to express a variety of additional messages to a large protest group at the site of the protest. For example, at a large parade in support of or opposition to a war, a candidate for public office might display campaign signs to the marchers, or a free speech organization might distribute “know your rights” leaflets to the marchers. Government has no legitimate interest in prohibiting multiple expressive activities that, without interfering with each other, can take place in the same public place at the same time.¹⁰

E. No “heckler’s veto”

Sometimes, when a protester expresses a controversial message, a person who hears the message may react violently against the protester. In such situations, it is the job of the police to protect the protester’s right to free speech and their physical safety, and to arrest or otherwise control those who seek to disrupt or attack the protester. Likewise, the police cannot arrest the protester, though their words are provoking a hostile audience reaction. Otherwise, a “heckler’s veto” would undermine our precious First Amendment rights. Thus, a Chicago police General Order allows police to silence a protester in such circumstances only if all available police resources

⁸ Texas v. Johnson, 491 U.S. 397, 409 (1989) (flag burning); Collin v. Smith, 578 F.2d 1197, 1202-03 (7th Cir. 1978) (swastika); Cohen, 403 U.S. at 20 (“fuck the draft”).

⁹ Lewis v. City of New Orleans, 415 U.S. 130, 135 (1974) (Powell, J., concurring) (“a properly trained officer may reasonably be expected to ‘exercise a higher degree of restraint’ than the average citizen, and thus be less likely to respond belligerently to ‘fighting words’”); Provost v. City of Newburgh, 262 F.3d 146, 159-60 (2nd Cir. 2001). See also Payne v. Pauley, 337 F.3d 767, 777 (7th Cir. 2003) (loudly arguing with and swearing at a police officer, by itself, is not disorderly conduct); City of Chicago, “Guide to demonstrations, protests, and First Amendment issues” (1996) (hereafter “Chicago 1996 Protest Guide”) at p. 8 (“Courts have found that police must have ‘thicker skins’ and tolerate verbal abuse that would otherwise constitute a breach of the peace if directed at an ordinary citizen.”).

¹⁰ See, e.g., ACLU v. GSA, 235 F. Supp. 2d 816 (N.D. Ill. 2002) (approving a class settlement agreement forbidding the federal government from denying a permit to engage in First Amendment activity on Chicago’s Federal Plaza solely because another group already has a permit to use the Plaza at the same time).

reasonably available have been deployed, efforts to control the hostile audience have failed, and there remains a threat of imminent violence.¹¹

Two of the leading U.S. Supreme Court cases that reject a “heckler’s veto” over protest came from Chicago. In the 1940s, the infamous Arthur Terminiello was wrongfully fined \$100 because his racist speech in an auditorium provoked an angry and turbulent response from the crowd of 1,000 counter-protesters outside. In the 1960s, the police wrongfully arrested the comedian and civil rights activist Dick Gregory, whose orderly protest against racial segregation in the public schools, in front of the mayor’s home, provoked an unruly reaction from onlookers.¹²

II. When can government require a permit to protest?

In some cases, government can require a permit as a condition of protest on public property. For example, government often can require a permit for parades in the streets, given the impact on vehicle traffic. Likewise, government often can require a permit for large protests in public parks and plazas, in order to ensure fairness among the various groups seeking to use the site.

On the other hand, the First Amendment generally bars government from requiring a permit when one person or a small group protest in a park, or when a group of any size protest on a public sidewalk in a manner that does not burden pedestrian or vehicle traffic.¹³ Such non-permitted protests might involve speeches, press conferences, signs, marches, chants, leaflets, expressive clothing, and efforts to speak with passersby. The absence of a permit for such protests simply does not burden any legitimate government interests. Thus, the Chicago Park District does not require a permit for gatherings in parks of fewer than 50 people. Likewise, the Chicago ordinance regulating public assembly does not require a permit for gatherings and marches on sidewalks that do not obstruct the normal flow of pedestrian traffic.¹⁴

¹¹ Chicago Police Dept., General Order G02-02-02, at Part III(E), available at <http://directives.chicagopolice.org/directives/>. See also Forsyth County, Ga. v. Nationalist Movement, 505 U.S. 123, 134 (1992) (“Listeners’ reaction to speech is not a content-neutral basis for regulation.”); Nelson v. Streeter, No. 88-cv-5434 (N.D. Ill.), Judgment Order; Chicago 1996 Protest Guide, supra, at pp. 2-3

¹² Terminiello v. City of Chicago, 337 U.S. 1 (1949); Gregory v. City of Chicago, 394 U.S. 111 (1969).

¹³ The Seventh Circuit recently opined that “a permit requirement is less likely to be content-neutral and narrowly tailored when it is intended to apply even to small groups,” and remanded that case for fact-finding regarding whether such a requirement was narrowly tailored in a particular “unique” forum. Marcavage v. City of Chicago, 659 F.3d 626, 634-35 (7th Cir. 2011). At least five circuits have struck down, as not narrowly tailored, an ordinance requiring small groups to obtain an assembly permit. Cox v. City of Charleston, 416 F.3d 281, 284-87 (4th Cir. 2005); Knowles v. City of Waco, 462 F.3d 430, 436 (5th Cir. 2006); ADC v. City of Dearborn, 418 F.3d 600, 608 (6th Cir. 2005); Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1038-43 (9th Cir. 2006); Community for Creative Non-Violence v. Turner, 893 F.2d 1387, 1392 (D.C. Cir. 1990). See also Douglas v. Brownell, 88 F.3d 1511, 1524 (8th Cir. 1996) (expressing doubt that such a requirement could pass legal muster); Burk v. Augusta-Richmond County, 365 F.3d 1247, 1259 (11th Cir. 2004) (Barkett, J., concurring) (opining thusly).

¹⁴ Chicago Municipal Code § 10-8-334(a) (definition of “public assembly”).

Moreover, if protesters gather in response to breaking news, the First Amendment requires an exception from the ordinary deadlines in the government's permit process.¹⁵ Thus, in the Chicago ordinance requiring permit applications 15 days before a parade, and notice to the City five days before a sidewalk demonstration that would impede pedestrian traffic, there is an exemption for spontaneous responses to current events.¹⁶

The First Amendment limits the kinds of permit fees and other financial burdens that government can impose on protesters. First, the charges cannot exceed the actual cost to government to regulate speech in the site.¹⁷ Second, government cannot charge protesters more when additional police are needed to control opponents of the protesters – that would be a kind of a “heckler’s veto.”¹⁸ Third, government cannot use an insurance requirement to bar a protest by a group that unsuccessfully attempted to obtain insurance.¹⁹ Fourth, there must be an exception for groups that cannot afford to pay the charges.²⁰ For example, in the Chicago ordinance requiring certain parade organizers to obtain \$1,000,000 in insurance, there is an exception where this would be “so financially burdensome that it would preclude” the application.²¹

When Chicago law requires a permit to protest, and the First Amendment does not excuse the absence of a permit, protesters without a permit might be arrested or prosecuted.

III. When else can government regulate the time, place, and manner of protest?

Government can regulate the time, place, and manner of protest on public property – but only if the regulations are narrowly tailored to advance an important government interest, and leave open ample alternative channels of communication. Various government regulations of protest address disrupting vehicle and pedestrian traffic, blocking building entrances, harassment,

¹⁵ Vodak v. City of Chicago, 639 F.3d 738, 749 (7th Cir. 2011) (“A city couldn’t without violating freedom of speech and assembly flatly ban groups of people from spontaneously gathering on sidewalks or in public parks in response to a dramatic news event.”).

¹⁶ Chicago Municipal Code §§ 10-8-330(c), 10-8-334(b)(1).

¹⁷ Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105 (1943); ACLU v. White, 692 F. Supp. 2d 986 (N.D. Ill. 2010).

¹⁸ Forsyth County, Ga., 505 U.S. at 142.

¹⁹ Collin v. Smith, 578 F.2d 1197, 1208-09 (7th Cir. 1978) (holding that the First Amendment was violated by “the use of the insurance requirement to prohibit the proposed demonstration” by a group that “proved” it “could not obtain the requisite insurance”). Cf. Thomas v. Chicago Park District, 227 F.3d 921, 925 (7th Cir. 2000) (holding that the First Amendment was not violated by the application of an insurance requirement where, “so far has been shown,” the insurance fee turned solely on neutral factors like “the size of the event,” and not on suspect factors like whether the event involved “controversial expressive activity likely to incite violence by onlookers or opponents”).

²⁰ See, e.g., Pritchard v. Mackie, 811 F. Supp. 665, 667-68 (S.D. Fla. 1993) (holding that the First Amendment was violated by the use of a \$1 million insurance requirement, which would cost “several hundred dollars,” to prohibit a demonstration organized by a person who lacked “the personal resources needed to purchase the required insurance”).

²¹ Chicago Municipal Code § 10-8-330(m) & (r).

targeted sidewalk protests, loud sounds, speech peddling, and street performances. Violation of these protest regulations can lead to arrest and prosecution.

One rule deserves special emphasis: Illinois law currently prohibits audio recording of on-duty police, including at protests on public property. This law is now subject to a constitutional challenge, and some police departments and prosecutors have stated that they will not enforce it. But other police and prosecutors continue to enforce it.

A. Blocking traffic and entrances

Protesters do not have a First Amendment right to block pedestrian or vehicle traffic, or to prevent entry and exit from buildings. For example, a federal court recently held that the Chicago police did not violate the First Amendment by arresting protesters who were impeding a heavy flow of pedestrian traffic on sidewalks near Chicago's Soldier Field, and who disobeyed a police order to step off the sidewalk and onto the immediately adjacent gravel.²² Likewise, a Chicago ordinance prohibits intentional obstruction of vehicle traffic.²³

Indeed, the general public has a right to freedom of movement that police must protect. For example, to address widespread unlawful blockades of the entrances to reproductive healthcare facilities, Congress enacted the Freedom of Access to Clinic Entrances Act of 1994, which prohibits the use of force, threats, or obstructions to interfere with access to such facilities.²⁴

B. Harassment

Protesters do not have a First Amendment right to harass other members of the public. For example, there is no right to block another person's freedom of movement in the public way, and then force them to listen to an unwanted message.²⁵

C. Targeted sidewalk protests

Protesters often seek to demonstrate on sidewalks abutting a building that contains an audience that would prefer not to hear the protesters' message. For example, a labor union might picket a worksite that uses allegedly unfair labor practices, or a citizen group might distribute leaflets critical of an elected official in front of that official's office. Courts have held that the First Amendment protects sidewalk protests targeted at courts, health care facilities, schools, and churches.²⁶ While a Chicago ordinance prohibits certain protests targeted at churches, the City in 2011 announced a policy of non-enforcement.²⁷

²² Marcavage, 659 F.3d at 632 (7th Cir. 2011).

²³ Chicago Municipal Code § 9-80-180.

²⁴ 18 U.S.C. § 248.

²⁵ People v. Davis, 291 Ill. App. 3d 552 (3rd Dist. 1997) (such harassment comprises disorderly conduct).

²⁶ United States v. Grace, 461 U.S. 171 (1983) (courts); Halfpap v. City of West Palm Beach, 2006 WL 5700261 (S.D. Fla. 2006) (health care facilities); Center for Bio-Ethical Reform v. L.A. County Sheriff, 533 F.3d 780 (9th Cir.

The First Amendment has been interpreted to not protect sidewalk protests targeted at particular homes.²⁸ An Illinois statute prohibits such targeted residential picketing.²⁹ However, the First Amendment does protect marches through residential areas that don't target a particular home.³⁰

Further, an Illinois statute prohibits fighting words within 300 feet and 30 minutes of a funeral.³¹ Police have enforced this statute against the inflammatory signs of the Westboro Baptist Church (displaying messages such as “thank God for IEDs”) on sidewalks across the street from military funerals. This is not a proper application of the fighting words doctrine, given the unlikelihood of fisticuffs between people across the street from each other. Police probably would not enforce this statute against less inflammatory funeral protests.

Within 50 feet of the entry of a health care facility, a Chicago ordinance bars protesters from approaching within eight feet of another person for the purpose of passing a leaflet, displaying a sign, or engaging in oral protest, education, or counseling.³² This ordinance is modeled on a Colorado statute that was upheld by the U.S. Supreme Court.³³ These laws typically are enacted in response to anti-abortion protesters, but they limit all manner of messages and messengers near health care facilities. These laws make it difficult to distribute leaflets, and are unnecessary in light of other laws that prohibit blockades, harassment, and the like. These laws do not impact the many forms of protest that do not involve approaching other persons, such as signs, speeches, and press conferences.

D. Loud sounds

The First Amendment allows reasonable regulations on sound amplification and other loud noise.³⁴ Chicago prohibits sound amplification (for example, with loudspeakers or bullhorns)

2008) (schools); PETA v. Rasmussen, 298 F.3d 1198 (9th Cir. 2002) (schools); Olmer v. City of Lincoln, 192 F.3d 1176 (8th Cir. 1999) (churches).

²⁷ Chicago Municipal Code § 8-4-10(j); Mitch Dudek, *Scientology protest causes city to stop enforcing ordinance*, Ch. Sun-Times, Aug. 4, 2011, available at <http://www.suntimes.com/news/metro/4783449-418/scientology-protest-causes-city-to-stop-enforcing-ordinance.html>.

²⁸ Frisby v. Schultz, 487 U.S. 474 (1988).

²⁹ 720 ILCS 5/21.1-2.

³⁰ Frisby, 487 U.S. at 486 (distinguishing, from the targeted residential picketing in that case, “more generally directed means of communication that may not be completely banned in residential areas,” including the “marches” at issue in Gregory).

³¹ 720 ILCS 5/26-6.

³² Chicago Municipal Code § 8-4-010(k).

³³ Hill v. Colorado, 530 U.S. 703 (2000).

³⁴ Ward v. Rock Against Racism, 491 U.S. 781(1989).

that is louder than an average conversational level at a distance of 100 feet, with an exception for parades and public assemblies with permits.³⁵ Applications for such permits must identify sound amplification devices that are too large to be carried by one person.³⁶

E. Speech peddling

The First Amendment protects “speech peddling,” that is, the sale in sidewalks and parks of merchandize that has political, artistic, or comparable significance. For example, courts have protected the right to sell expressive T-shirts on sidewalks inside the annual Taste of Chicago event in Grant Park, and the right to sell books on sidewalks near Chicago’s United Center on game nights.³⁷

The Chicago ordinance that regulates speech peddling is too restrictive. Speech peddling in the entire downtown and adjacent areas is limited to ten designated spots.³⁸ There are large “prohibited districts” in other parts of the City where no speech or other peddling is allowed at all.³⁹ Also, speech peddlers, like other peddlers, must pay \$82 per year for a peddling license.⁴⁰ The City’s Department of Business Affairs and Licensing regulates and grants permits for speech peddling.⁴¹

F. Street performances

The First Amendment protects street performances in public places.⁴² Unfortunately, a Chicago ordinance prohibits street performances in Millennium Park and adjacent sidewalks, and on the North Michigan Avenue sidewalks between Delaware Place and East Superior Street.⁴³ The ordinance also requires a permit for street performers.⁴⁴

³⁵ Chicago Municipal Code § 11-4-2800(a) & (c), & § 11-4-2920(d)(1). See also id. at § 4-268-50(d)(1) (prohibiting such loud sounds made by street performers).

³⁶ Chicago Municipal Code § 10-8-330(e)(1)(ix).

³⁷ Ayres v. City of Chicago, 125 F.3d 1010 (7th Cir. 1997) (T-shirts); Weinberg v. City of Chicago, 310 F.3d 1029 (7th Cir. 2002) (books).

³⁸ Chicago Municipal Code §§ 4-244-141.

³⁹ Chicago Municipal Code §§ 4-244-140(b), -145, -146, -147.

⁴⁰ Chicago Municipal Code §§ 4-244-141(a) & (c)(1), citing § 4-244-060, citing §4-5-010(66).

⁴¹

<http://www.cityofchicago.org/content/dam/city/depts/bacp/general/Speech%20Peddlers%20License%20Fact%20Sheet.pdf>

⁴² Friedrich v. City of Chicago, 619 F. Supp. 1129 (N.D. Ill. 1985); Berger v. City of Seattle, 569 F.3d 1029 (9th Cir. 2009) (en banc).

⁴³ Chicago Municipal Code §§ 4-268-050(f) & (h).

⁴⁴ Chicago Municipal Code §§ 4-268-020 & -030.

G. Disorderly conduct

The most common grounds for arresting protesters are the Illinois statute and Chicago ordinance against disorderly conduct, and especially their respective bans against unreasonable acts that disturb others and provoke a breach of the peace.⁴⁵ Examples of unprotected disorderly conduct that might arise at a protest include: blocking traffic; harassing someone by blocking their free movement in the public way, and then forcing them to listen to an unwanted message; fighting words; making noise in a residential neighborhood in the middle of the night; and disrupting a government hearing by standing and shouting in the hearing room.⁴⁶ On the other hand, the vast majority of protest activity does not comprise disorderly conduct. For example, audience hostility does not transform a protest into disorderly conduct, as in the case of Dick Gregory discussed above, or in the case of Karl Meyer, who was wrongfully arrested because his protest in Chicago's Old Town neighborhood against the Vietnam War provoked a violent reaction.⁴⁷

The Chicago disorderly conduct ordinance also prohibits failure to obey a lawful police order to disperse, in the immediate vicinity of three or more other people who are committing disorderly conduct.⁴⁸ One Illinois court upheld the application of this ordinance provision to a bystander who refused to disperse from the scene of a riot – a scenario where no one was exercising any First Amendment rights.⁴⁹ On the other hand, the ACLU believes that the First Amendment would be violated by the application of this ordinance provision to lawful demonstrators who failed to obey a dispersal order resting solely on the proximity of three law breakers, for example, where a crowd of lawful demonstrators contains a small number of persons who are throwing rocks at police or windows. Likewise, the First Amendment would be violated by the application of this ordinance provision to lawful protesters who failed to obey a dispersal order resting solely on violence against the protesters by opponents of the message – this would be a heckler's veto.⁵⁰

H. Other statutes and ordinances that might be used to arrest protesters

Pursuant to several other Illinois statutes and Chicago ordinances, protesters might be arrested or prosecuted for conduct unprotected by the First Amendment. These include:

⁴⁵ Chicago Municipal Code § 8-4-010(a) (fine only); 720 ILCS 5/26-1(a)(1) (up to 30 days confinement).

⁴⁶ Jones v. Watson, 106 F.3d 774, 779 (7th Cir. 1997) (blocking traffic); People v. Davis, 291 Ill. App. 3d 552 (3rd Dist. 1997) (audience captivated by blocked movement); Gower v. Vercler, 377 F.3d 661, 670-71 (7th Cir. 2004) (fighting words); People v. Albert, 243 Ill. App. 3d 23 (2nd Dist. 1993) (noise at night in residential neighborhood); United States v. Woddard, 376 F.2d 136 (7th Cir. 1967) (disrupting a government hearing).

⁴⁷ City of Chicago v. Meyer, 44 Ill. 2d 1 (Ill. 1969).

⁴⁸ Chicago Municipal Code § 8-4-010(d).

⁴⁹ City of Chicago v. Greene, 47 Ill. 2d 30 (1970) (rock throwers).

⁵⁰ Schirmer v. Nagode, 621 F.3d 581, 583 (7th Cir. 2010).

- Obstructing or resisting a police officer.⁵¹
- Trespassing.⁵²
- Failing to obey a lawful police order regarding traffic.⁵³
- Vandalism.⁵⁴
- Breaking curfew at a park or beach.⁵⁵
- Misdemeanor mob action, meaning two or more people assembled with intent to commit a crime.⁵⁶
- Felony mob action, meaning two or more people who act together and use violence to disturb the peace.⁵⁷
- Inciting violence against a person because of their race, religion, or the like.⁵⁸

Finally, at a building or grounds where the Secret Service is protecting the President or someone else, it is a federal crime to enter or remain in the building or grounds without lawful authority, or to obstruct entry or exit, or to intentionally disrupt government business.⁵⁹

I. Recording police

The First Amendment protects photography of on-duty police officers in public places. Federal courts enforced this right, for example, in a case involving photography of police excessive force during the 1968 Democratic National Convention in Chicago.⁶⁰ Silent video recording of on-duty police is also protected by the First Amendment.

⁵¹ Chicago Municipal Code § 2-84-300 (fine only); 720 ILCS 5/31-1 (class A misdemeanor).

⁵² Chicago Municipal Code § 8-4-050 (fine only); 720 ILCS 5/21-3 (class A or B misdemeanor).

⁵³ Chicago Municipal Code § 9-40-030 (confinement up to six months); 625 ILCS 5/11-203 (fine only).

⁵⁴ Chicago Municipal Code § 8-4-060 (vandalism, punishable by up to one month of confinement); § 8-4-120 (damage to public property, fine only).

⁵⁵ Chicago Municipal Code §§ 10-36-110, -370 (confinement up to 7 days).

⁵⁶ 720 ILCS 5/25-1(a)(2) (class C misdemeanor).

⁵⁷ 720 ILCS 5/25-1(a)(1) (class 4 felony).

⁵⁸ Chicago Municipal Code § 8-4-020 (up to six months confinement).

⁵⁹ 18 U.S.C. § 1752 (confinement up to one year).

⁶⁰ Schnell v. City of Chicago, 407 F.2d 1084 (7th Cir. 1969).

Audio recording on-duty police is treated differently in Illinois. The Illinois Eavesdropping Act prohibits the audio recording of any conversation – whether private or non-private, and whether secret or open – absent all-party consent.⁶¹ If the subject of recording is a police officer, the penalty is increased, to as many as 15 years of incarceration.⁶² The Act has exceptions for police-on-civilian audio recording,⁶³ but not the other way around. People in Illinois are prosecuted for audio recording on-duty police. This Illinois Act is the nation's single most severe restraint on civilian-on-police audio recording.

The ACLU has a pending suit alleging that the Act violates the First Amendment as applied to audio recording on-duty police in public places. The Illinois General Assembly is now considering a bill to amend the Act to create a new exemption for certain civilian-on-police recording. A federal appeals court in Massachusetts recently held that the First Amendment protects such recording.⁶⁴ The City of Chicago recently announced that its police will not enforce the Act during the upcoming NATO summit. Similarly, the McClean County State's Attorney recently announced that he will not enforce the Act against civilians who record police. However, the law remains on the books, other police and prosecutors have not disavowed arrest and prosecution (including the Cook County State's Attorney), and the law allows the subjects of recording to bring civil actions against those who make the recordings.

Likewise, persons who live-stream on-duty police in public places might be subjected to arrest or prosecution under the Illinois Eavesdropping Act. The Act makes it a crime to intentionally "hear or record" a conversation by means of a machine, absent all-party consent.⁶⁵ Illinois courts have not yet specifically ruled on whether this ban applies to a person who uses a machine to live-stream a conversation, for purposes of helping other people in different locations to hear that conversation as it happens, and without any intent by the person making the live-stream to use that machine to record that conversation or to facilitate their own hearing of that conversation. In the absence of controlling authority, an Illinois state's attorney might choose to indict a person who live-streams a conversation for allegedly violating the Act. Success in the ACLU's pending suit would likely extend beyond audio recording, also to live-streaming. But for now, some police and prosecutors continue to enforce the Act in this context.

IV. Civil disobedience

Civil disobedience is the refusal to comply with certain laws as a form of protest. Often these are valid laws, such as a prohibition on obstructing ingress or egress to a building. The First Amendment generally does not protect such acts.

⁶¹ 720 ILCS 5/14-1(d) & -2(a)(1).

⁶² 720 ILCS 5/14-4(B); 730 ILCS 5/5-4.5-30.

⁶³ 720 ILCS 5/14-3(h), (h-5), (h-10), (k), & (l).

⁶⁴ Glik v. Cunniffe, 655 F.3d 78 (1st Cir. 2011).

⁶⁵ 720 ILCS 5/14-2(a)(1).

When a crowd of protesters is in a place that police believe the crowd cannot lawfully be, the police must carefully distinguish between those protesters who intend to be arrested for civil disobedience, and those protesters who do not know their presence is unlawful. The best police practice is individualized commands to leave on threat of arrest, followed by a realistic opportunity to leave. Thus, during the spontaneous anti-war mass march in Chicago at the start of the Iraq War in 2003, it was unlawful for police to arrest 900 people on Chicago Avenue without first notifying them that they must disperse or be arrested.⁶⁶

An Illinois statute and a Chicago ordinance prohibit resisting arrest.⁶⁷ The former has been applied to “going limp” during arrest.⁶⁸ The latter specifically prohibits passive resistance to arrest, as well as active resistance. Thus, a person who commits civil disobedience, and then goes limp during arrest, might face charges both for their initial act of civil disobedience, and also for resisting arrest. On the other hand, mere argument with a police officer about the validity of an arrest, without some physical act which impedes the arrest, does not amount to resisting arrest.⁶⁹

V. What should I do if police stop or arrest me?

If police stop you for questioning in a public place:

- Stay calm. Don’t run. Don’t argue, resist, or obstruct the police, even if you are innocent or police are violating your rights. Keep your hands where police can see them.
- Ask if you are free to leave. If the officer says yes, calmly and silently walk away. If you are under arrest, you have a right to know why.
- You have the right to remain silent and cannot be punished for refusing to answer questions. While you are on foot in a public place in Illinois, if a police officer asks you to identify yourself, you cannot be arrested for refusing to answer, but you can be arrested for giving a false answer.⁷⁰ If you wish to remain silent, tell the officer out loud. If you do talk to the police, do not lie: doing so often is a crime.

⁶⁶ Vodak, 639 F.3d at 738.

⁶⁷ 720 ILCS 5/31-1; Chicago Municipal Code § 2-84-300.

⁶⁸ People v. Raby, 40 Ill. 2d 392, 399, 402 (1968).

⁶⁹ Raby, 40 Ill. 2d at 599.

⁷⁰ In Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177 (2004), the Court held that the Fourth Amendment was not violated by statutes empowering police to arrest persons who refuse to identify themselves during Terry stops. At that time, an Illinois statute allowed police during a Terry stop to “demand the name and address” from the suspect. 725 ILCS 5/107-14. That law remains on the books, but it “does not specifically require a suspect to identify himself or herself,” and thus police cannot arrest a person solely because they refuse to do so. People v. Fernandez, 2011 WL 6849673, *3 (Ill. Ct. App. 2nd Dist. 2011). See also Williams v. Jaglowski, 269 F.3d 778 (7th Cir. 2001) (a suspect did not commit the crime of obstructing a police officer by refusing to state her birth date). After Hiibel, Illinois adopted a new statute making it a crime during a Terry stop or an arrest for a civilian to give a false name,

- You do not have to consent to a search of yourself or your belongings, but police may “pat down” your clothing if they reasonably suspect that you possess a weapon. You should not physically resist, but you have the right to refuse consent for any further search. If you do consent, it can affect you later in court.

If police arrest you:

- Do not resist arrest, even if you believe the arrest is unfair.
- Say you wish to remain silent and ask for a lawyer immediately. Don’t give any explanations or excuses. If you can’t pay for a lawyer, you have the right to a free one, unless a fine is the only penalty for the crimes you are accused of committing.⁷¹ Don’t say anything, sign anything, or make any decisions without a lawyer.
- You have the right to make a local phone call. However, you should not talk about the facts of your case over the phone from jail, because the police might be listening.
- Prepare yourself and your family in case you are arrested. Memorize the phone numbers of your family and your lawyer. Make emergency plans if you have children or take medication. If you have photo identification with you during an arrest, police can more quickly confirm your identity, and may more quickly release you.
- If you were arrested for a fine-only offense or for a misdemeanor, you usually will be eligible for prompt release from the police station lock-up pursuant to an individual recognizance bond (often called an “I-bond”).⁷² No more than 48 hours after your arrest, and regardless of the charges, you have the right to appear before a neutral judge.
- If you are a non-citizen, ask your lawyer about the effect of a criminal conviction or plea on your immigration status. Don’t discuss your immigration status with anyone but your lawyer. If an immigration agent visits you in jail, do not answer questions or sign anything before talking to a lawyer.
- Try to learn and remember the names and badge numbers of all police officers involved in your arrest. Also, try to remember all the details of your arrest, and write them down as soon as possible. If you are injured, seek medical attention immediately, photograph your injuries, and obtain a copy of all treatment records.

address, or birthdate. 720 ILCS 5/31-4.5. This new statute does not extend to a suspect who simply refuses to provide this identifying information.

⁷¹ 725 ILCS 5/113-3(b). “Illinois provides a right to counsel that is broader than the sixth amendment right to counsel.” People v. Campbell, 224 Ill. 2d 80, 85 (Ill. 2006).

⁷² 725 ILCS 5/110-2; Ill. Sup. Ct. Rules 528, 553(a) & (d).

VI. When can Chicago police spy on protesters?

Without making an arrest, Chicago police might disrupt or chill First Amendment activity by spying on it. This might occur during protest planning, or at a protest itself.

From the 1920s through the 1970s, the Chicago Police Department's notorious "Red Squad" spied on and maintained dossiers about thousands of law-abiding individuals and groups, even going as far as to infiltrate the meetings and memberships of political and civil rights organizations. Many groups sued. They eventually entered a settlement agreement with the City that regulated collection of information about people based on their First Amendment activity, such as joining a political or civil rights group, or marching in a parade. Most significantly, this agreement usually required police to have "reasonable suspicion" of crime before investigating First Amendment activity. Unfortunately, these regulations were lifted in 2009.

Today, the City allows its police officers to investigate First Amendment activity based on a mere "proper law enforcement purpose."⁷³ This nebulous standard is far less protective of protest than the previous reasonable suspicion standard: it allows fishing expeditions absent a criminal predicate. Under this standard, the Chicago police in 2002 improperly spied on the efforts of the famously nonviolent American Friends Service Committee to plan a lawful protest against the upcoming meeting in Chicago of the Trans-Atlantic Business Dialogue.⁷⁴ Unfortunately, it appears that in the future, undercover Chicago police officers will continue to attend protest planning meetings without identifying themselves.

Further, Chicago has the nation's largest and most integrated system of video surveillance cameras, according to a former U.S. Secretary of Homeland Security. These cameras blanket the downtown Chicago area. The City's camera system now has sophisticated zoom and automatic tracking technologies, and the City has sought a facial recognition system. Unfortunately, the City's applicable General Order allows police to use this camera system to film protests based on the insufficiently protective "proper law enforcement purpose" standard.⁷⁵ The Chicago police should instead adopt a policy requiring reasonable suspicion of crime before police may aim a camera at First Amendment activity, or zoom any activity. Also, there should be an even higher "probable cause" standard for any automatic tracking or facial recognition.⁷⁶

Finally, Chicago operates a "fusion center" known as the Crime Prevention Information Center. Its purpose is to gather, store, and share information about suspected criminal activity. In other states, fusion centers have improperly gathered, stored, and shared information about lawful

⁷³ Chicago Police Dept., General Order G02-02-01, at Part II(A)(2).

⁷⁴ Fran Spielman, *ACLU wants to rein in spying on citizens by Chicago Police Dept.*, Ch. Sun-Times, Apr. 26, 2011, available at <http://www.suntimes.com/news/cityhall/5038595-418/aclu-wants-to-rein-in-spying-by-chicago-police-department.html>.

⁷⁵ Chicago Police Dept., Special Order S02-02-01, at Part IV(B).

⁷⁶ See generally ACLU of Illinois, "Chicago's Video Surveillance Cameras: A pervasive and unregulated threat to our privacy" (February 2011), at http://il.aclu.org/site/DocServer/Surveillance_Camera_Report1.pdf?docID=3261.

groups and their political beliefs and activities.⁷⁷ The City should adopt a “reasonable suspicion” standard for this fusion center, to avoid the kinds of abuses committed by fusion centers in other states, and in the past by Chicago’s Red Squad. Unfortunately, the controlling Chicago policy allows its fusion center to collect, disseminate, and store “suspicious activity reports” based on “a level of suspicion that is less than ‘reasonable suspicion,’” namely, a mere “potential terrorism nexus,” or activities only “consistent with” terrorism.⁷⁸ Notably, the Illinois State Police has adopted a reasonable suspicion standard for its fusion center, and the Director of National Intelligence has adopted that standard for its nationwide database of suspicious activity reports from state and local police.⁷⁹

VII. Where do protests commonly occur in Chicago?

The public locations most commonly used for protest in Chicago are owned by different government agencies, and thus have different rules and permit processes. They also enjoy different levels of First Amendment protection, depending upon whether they are “traditional public forums” entitled to the most protection, or other kinds of forums entitled to less protection. Immediately below is a list of these locations, and a brief description of their level of First Amendment protection, along with their owners, rules, and permit processes.

A. Parades in the streets

To hold a parade in Chicago’s streets, protesters must submit a permit application to the City’s Department of Transportation.⁸⁰ If the Department denies a parade permit, or grants a modified permit (for example, along a different route than requested), then the applicant can appeal to the City’s Department of Administrative Hearings, and to a judge.⁸¹ For downtown parades, and large parades anticipated to cost more than \$20,000 in City services, the applicant must obtain

⁷⁷ <http://www.governor.maryland.gov/documents/SachsReport.pdf>;
<http://www.aclu-md.org/Index%20content/NoSpying.html>;
<http://www.columbiatribune.com/news/2009/mar/14/fusion-center-data-draws-fire-over-assertions/>;
<http://www.aclu.org/technology-and-liberty/fusion-center-declares-nation-s-oldest-universities-possible-terrorist-threat>.

⁷⁸ Chicago Police Dept.’s CPIC, “Privacy, civil rights, and civil liberties protection policy” (approved in March 2011) at Parts E(1), F(2), F(3).

⁷⁹ Illinois State Police, “Privacy Policy for the Statewide Terrorism and Intelligence Center” (April 2010) at Articles V(A), V(B), V(C)(1), V(C)(4), V(G)(1), VI(B)(1)(a); Director of National Intelligence, “Functional Standard for Suspicious Activity Reporting for the Information Sharing Environment” (May 2009). See also 28 C.F.R. §§ 23.3(b)(3)(i), 23.20(a), 23.20(f)(1) (requiring reasonable suspicion for state and local criminal intelligence databases funded by the federal government).

⁸⁰

[http://www.cityofchicago.org/content/dam/city/depts/cdot/permit/Applications/Application for a Parade Permit.pdf](http://www.cityofchicago.org/content/dam/city/depts/cdot/permit/Applications/Application%20for%20a%20Parade%20Permit.pdf)

⁸¹ Chicago Municipal Code § 10-8-330(k) & (l).

\$1,000,000 in insurance, though there is an exception where this amount would be “so financially burdensome that it would preclude” the application.⁸²

B. Protest on the sidewalks

Many Chicagoans use the public sidewalks throughout our City as a site for myriad protest activities, including speeches, press conferences, display of signs, marches, leafleting, and attempting to speak with passersby. If such sidewalk protests do not obstruct the normal flow of pedestrian traffic, then the City ordinance does not require a permit.⁸³ If a sidewalk assembly will burden pedestrian traffic, the ordinance requires five-day notice to the Department of Transportation.

Unfortunately, the U.S. and Illinois Constitutions do not protect protest on sidewalks on private property.⁸⁴

C. Daley Plaza

Daley Plaza in downtown Chicago, owned by the City of Chicago, is a public forum enjoying great First Amendment protection.⁸⁵ Daley Plaza is operated by the Chicago Public Building Commission, which has issued rules for using Daley Plaza, and a permit application process.⁸⁶

D. The Thompson Center Plaza

The plaza next to the James R. Thompson Center in downtown Chicago, owned by the State of Illinois, is a public forum enjoying great First Amendment protection.⁸⁷ The Thompson Center Plaza is operated by Illinois Central Management Services, which has issued rules for using the Thompson Center plaza, and a permit application process.⁸⁸

⁸² Chicago Municipal Code § 10-8-330(m) & (r).

⁸³ Chicago Municipal Code § 10-8-334(a) (definition of “public assembly”).

⁸⁴ People v. DiGuida, 152 Ill.2d 104 (1992).

⁸⁵ Grutzmacher v. Public Building Commn. of Chicago, 700 F. Supp. 1497 (N.D. Ill. 1988).

⁸⁶ <http://pbcchicago.com/>; <http://www.aclu-il.org/wp-content/uploads/2012/04/Letter-of-12-20-11-from-CPBC-to-ACLU.pdf>;
<http://www.cityofchicago.org/content/dam/city/depts/mose/DaleyPlaza/DaleyPlazaApplicationReserveSpace.pdf>;
http://www.cityofchicago.org/city/en/depts/dca/provdrs/attractions_eventsandexhibitions/svcs/application_for_permittoreservespaceondaleyplazaorlobby.html.

⁸⁷ Cantrell v. Rumman, 2005 WL 1126551 (N.D. Ill. 2005).

⁸⁸ <http://www2.illinois.gov/cms/About/JRTC/Pages/Contact.aspx>;
<http://www.ilga.gov/commission/jcar/admincode/044/04405000sections.html>; <http://www.aclu-il.org/wp-content/uploads/2012/04/Thompson-Center-Demonstration-Request-Form.pdf>

E. The Federal Plaza

The plaza next to the federal Kluczynski Building and Loop Post Office, owned by the U.S. government, is a public forum enjoying great First Amendment protection. The Federal Plaza is operated by the federal General Services Administration, which has issued rules for public properties like the Federal Plaza, and a permit application process.⁸⁹

F. Grant Park

Grant Park, located between Chicago's downtown and Lake Michigan, is a public forum enjoying great First Amendment protection. It is owned by the Chicago Park District, which has issued rules regarding the use of Grant Park and other parks, and a permit application process.⁹⁰

G. Millennium Park

Millennium Park, located in Chicago's downtown at the northwest corner of Grant Park, is operated by the City's Department of Cultural Affairs and Special Events.⁹¹ The City allows leafleting and begging in Millennium Park.⁹² While courts have not addressed whether the First Amendment protects rallies and picketing in Millennium Park, the better view is that it does.

H. McCormick Place

McCormick Place, one of the nation's largest convention centers, is located on Lake Michigan just south of downtown. It is owned and operated by a government agency known as the Metropolitan Pier and Exposition Authority.⁹³ The MPEA allows leafleting at doors into McCormick Place, and rallies and picketing at two sites near the convention center.⁹⁴

I. Navy Pier and Gateway Park

⁸⁹ <http://www.gsa.gov/portal/content/101886>; <http://www.aclu-il.org/wp-content/uploads/2012/04/GSA-rules-re-property.pdf>; (2) <http://www.aclu-il.org/wp-content/uploads/2012/04/GSA-map-of-plaza.pdf>; <http://www.aclu-il.org/wp-content/uploads/2012/04/GSA-Permit-application.pdf>

⁹⁰ <http://www.cpdit01.com/resources/pdf-library/chicago-park-district-code/Chapter%2007.pdf>; http://www.chicagoparkdistrict.com/assets/1/23/2012_Special_Event_Permit_Application2.pdf; <http://www.chicagoparkdistrict.com/permits-and-rentals/permit-application-process/>

⁹¹ <http://www.explorechicago.org/city/en/millennium.html>;
http://www.cityofchicago.org/content/city/en/depts/dca/provdrs/attractions_eventsandexhibitions.html

⁹² Correspondence of 5/31/05 and 6/9/05 between the ACLU and the City (leafleting); *Pindak v. City of Chicago*, No. 06-cv-5679 (N.D. Ill.) (begging).

⁹³ <http://www.mccormickplace.com/>; <http://www.mpea.com/>

⁹⁴ <http://www.aclu-il.org/wp-content/uploads/2012/04/Albrecht-Settlement-Agreement.pdf>

Navy Pier is located on Lake Michigan just north of Chicago's downtown, and Gateway Park is located immediately to the west of Navy Pier.⁹⁵ On Navy Pier, the First Amendment protects the right to leaflet, but not the right to protest in a group. In Gateway Park, the First Amendment protects both.⁹⁶ The MPEA owns both areas, and has issued rules and a permit process for them.⁹⁷ The courts are now considering whether a special feature of Gateway Park – it is a small area through which all foot traffic to Navy Pier must pass – means that the MPEA can require a permit for protests by one person or by a small group of people.⁹⁸

J. O'Hare and Midway Airports

The O'Hare and Midway airports are operated by the Chicago Department of Aviation. At both airports, there are sites for leafleting inside the terminals, and sites for small demonstrations on the abutting sidewalks. The Department of Aviation has created a permit application process and rules for these protest sites.⁹⁹

Conclusion

For nearly a century, the ACLU has worked to protect and expand our right to protest, among many other fundamental rights. If you believe your right to protest has been violated, please contact the ACLU of Illinois. Our phone number is (312) 201-9740, and our website is <http://www.aclu-il.org/>. We cannot provide legal services to all callers, and generally provide legal representation only in cases affecting a large number of people. However, our intake counselors, in consultation with our attorneys, may be able to provide you with helpful information and referrals.

⁹⁵ <http://www.navy pier.com/>

⁹⁶ *ACORN v. MPEA*, 150 F.3d 695 (7th Cir. 1998).

⁹⁷ <http://www.navy pier.com/about/pdf/NavyPierPublicExpressionPolicy.pdf>

⁹⁸ *Marcavage v. City of Chicago*, 659 F.3d 626 (7th Cir. 2011).

⁹⁹ <http://www.aclu-il.org/wp-content/uploads/2012/04/OHare-Speech-policy-effective-9-22-06.pdf>