



THE RIGHT TO PEACEFULLY ASSEMBLE: PROTEST GUIDANCE FOR NEA LEADERS, MEMBERS, AND STAFF

I. Introduction

Americans' right to peacefully assemble is a key function of our democracy and is essential to movements for change. The right to protest is a fundamental human right, guaranteed by the First Amendment to the U.S. Constitution. However, exercising this right is not without its risks.

In light of the president's deployment of military troops to quell anti-immigration enforcement protests, anti-protest laws recently passed in several states, the increased militarization of local law enforcement agencies across the nation, and the likelihood that local law enforcement officers will respond to peaceful protests with military-style tactics and equipment, it is important for NEA leaders, members, and staff to plan and prepare before participating in any public demonstrations.

In addition to reviewing this guidance, we encourage you to confer with NEA and/or affiliate staff and local counsel about state or local laws limiting the right to peacefully assemble, potential risks for NEA leaders, members, and staff, and ways to mitigate those risks.

II. Protest Guidance

A. ***Know Your Rights***

- Your rights are strongest in what are known as "traditional public forums," such as streets, sidewalks, and parks. It does not include private property.
- You do not need a permit to march in the streets or on sidewalks, as long as they do not obstruct car or pedestrian traffic.
- The First Amendment does *not* protect those who break the law, like damaging property or physically assaulting others.
- When in a public space, you have the right to photograph or record anything in plain view.
 - This includes law enforcement officers, as long as you are not "interfering with their duties."
- If you do not have a permit, law enforcement officers can ask you to move to the side of the street or sidewalk to let others pass or for safety reasons.
- If law enforcement officers issue a dispersal order, they must clearly announce it, explain the consequences, and provide you a reasonable

opportunity to comply, including sufficient time and a clear, unobstructed exit path.

- Counter protesters also have free speech rights. Thus, police must treat protesters and counter protesters equally.
 - Prepare for the possibility that counter protesters or other antagonistic groups may attempt to disrupt the protest or cause injury to NEA leaders, members, and staff.

B. Before You Go to A Protest

- Familiarize yourself with laws and policies restricting individuals' right to assemble in your state or city.
 - Check with your state or local affiliate's general counsel's office for more information.
- Review the resources available on NEA's website, including:
 - [Educator Rights and Political Participation](#)
 - [Educator Rights to Support Student Activism](#)
 - [How Should Educators Handle Harassment?](#)
- Review guidance for protestors.
 - *Know Your Rights: Protestors' Rights*, ACLU, <https://www.aclu.org/know-your-rights/protesters-rights>.
 - *Know Your Rights: A Guide for Protestors*, National Lawyers' Guild, updated June 2022, <https://www.nlg.org/wp-content/uploads/2022/06/Know-Your-Rights-Booklet-2022.pdf>.
- Make sure you have legal observers to protect participating NEA leaders, members, and staff. The local National Lawyers Guild chapter or other trained attorneys may be able to serve as legal observers.
- Be aware of the route and site of the march or demonstration and the particular laws and sensitivities of those locations. Understand that national guard and the military may be deployed to protect federal personnel and federal facilities. ***Demonstrations that target such personnel or facilities raise unprecedented risks to participants.***

C. Create A Safety Plan

- Tell a trusted family member or friend you plan to attend the protest. Give them the date, time, location, and/or route of the protest (if available in advance) and the names and contact information of the individuals with whom you plan to protest.
 - If you plan to protest alone, ask someone at the protest who you feel comfortable with to be your safety buddy.
- Determine how you will maintain your personal safety.
 - Pack your ID and essential items like water, snacks, cash, medications, and a first aid kit (to help yourself or others should someone get injured).

- Dress for safety and mobility (e.g., long sleeves, pants, and supportive shoes).
- Determine how you will maintain your digital privacy.
 - Phone data can make you vulnerable to surveillance by law enforcement.
 - If you plan to bring your phone to the protest, secure it by turning on airplane mode, ensuring it is locked with a passcode, and deactivating your Face ID and fingerprint features, so law enforcement officers cannot access your information.
- To be prepared for a potential arrest, write down important phone numbers, like an emergency contact, legal support hotline, and bail support, on your arm with a pen or permanent marker.
- Make sure your trusted family member or friend will be available to help should you get arrested and need them to make arrangements for you (e.g., access your home, take care of children or pets).

D. *While You Are at A Protest*

- Be aware of your surroundings and identify a safety buddy.
 - Ask a friend, colleague, or someone you are comfortable with to be your safety buddy.
- Send a pin on a trusted or secure communication app to a trusted family member or friend so they know where you are. Remember that cell phone reception can be spotty in crowded areas, so make a fall back plan in the event cell phone reception fails.
- Protect the identity of other NEA leaders, members, and staff when recording and taking photos.
 - Make sure you do not post photos or videos of other protestors unless you have their explicit consent or they previously agreed to it. Otherwise, blur their faces.
- Do not engage with or antagonize law enforcement officers.
- Keep an eye on law enforcement tactics and move out of harm's way.
 - Law enforcement officers will often gear up before they rush the crowd, kettle (i.e., trap) protestors, or deploy "less-lethal force."
- Write down the badge numbers of any law enforcement officers who are intimidating, being aggressive, or arresting protestors.
- If the media approaches you, direct them to NEA leaders or the protest organizers.
- If you are pepper-sprayed, only use water to flush your eyes.

E. *If You Are Arrested at A Protest*

- At any protest where law enforcement officers are present, there is always a chance you will be arrested, *even if you are not doing anything wrong.*

- If law enforcement officers stop you, ask if you are free to go. If they say yes, calmly walk away.
- If you get arrested, do not say anything. Ask for a lawyer immediately.
 - Remember, law enforcement officers are permitted to lie about your situation and make false promises.
 - *Do not sign, say, or agree to anything* without a lawyer present.
- Find out which precinct you are being taken to and yell it to your safety buddy or someone else on the ground (e.g., a fellow NEA leader, member, or staff person, a legal observer).
- You never have to consent to a search of your person or your belongings.
 - Law enforcement does not have the right to go through your phone or other devices without consent. *Do not* give consent if asked.
- If you are taken in for processing, give only your name and ID with your current address.
 - You are *not required* to submit to facial recognition or iris scans.
- If you are trans or non-binary, you have a right to be held in the cell of your choice.
- If you are hurt during an arrest, you have the right to request medical care.
- Remember, you have a right to make three free phone calls.

F. *If Your Rights Are Violated*

- Write down everything you remember, including the law enforcement officer's badge, patrol car numbers, and the agency they work for.
- Get contact information for any witnesses.
- Take photos of your injuries.
- Request body cam footage of your arrest or any interactions with the police.

III. Recommendations for Affiliates and Local and State Leaders

The U.S. Constitution and various state laws guarantee certain free speech rights, but that does not always mean that the police will respect them, or that a court will uphold NEA leaders', members', or staff persons' rights if they are violated. For this reason, we recommend that you and your staff:

- Create a rapid response plan in case participating leaders, members, or staff are detained, arrested, or subjected to police or political violence.
- Identify and coordinate with state and local coalition partners and other non-profit/501(c)(3) organizations that have established legal defense and bail funds, jail support for individuals who are arrested, and attorneys to provide legal representation in criminal or civil rights proceedings.

Occasionally, affiliates are asked to make their building or parking lot available as a staging area for planned protests. Before affiliate leaders agree to do so, we recommend you and your staff consider and discuss with your affiliate issues and risks like:

- Potential campaign finance issues if the protest activity is deemed a campaign contribution;
- Potential risks to the affiliate's 501(c)(5) status if the protest is subsequently deemed illegal; and
- Affiliate liability for personal injuries to staff, members, or other individuals on affiliate property, including loss of insurance coverage.

IV. Trump's Deployment of the Military to Suppress Protests & The Insurrection Act of 1807

On June 7, 2025, President Trump signed a memorandum deploying "at least 2,000 National Guard personnel" to, as he says, protect U.S. Immigration and Customs Enforcement ("ICE") personnel, other federal government personnel, and federal property from "violent protests" in Los Angeles. Domestic military deployments usually come at a governor's request and in response to serious threats. Local authorities in Los Angeles have not asked for such help. Trump's deployment of National Guard troops in Los Angeles marks the first time in 60 years that an American president has taken such action without a governor's consent.

The memorandum cites Title 10, Section 12406 of the U.S. Code. This section of federal law allows the president to bypass a governor's authority over the National Guard and call those troops into federal service when he considers it necessary to repel an invasion or suppress a rebellion. According to Trump, the anti-immigration enforcement protests in Los Angeles prohibited the execution of immigration enforcement and, therefore, met the definition of a "rebellion against the authority of the Government of the United States."

Trump's memorandum also authorizes the Pentagon to dispatch active-duty troops to "support the protection of Federal functions and property." Trump's preemptive deployment of approximately 700 U.S. Marines to Los Angeles is an unprecedented and alarming sign that he is willing to send active military troops to U.S. cities to quell protests.

Arguably, Trump's deployment of military personnel under Title 10, Section 12406 of the U.S. Code — and not the Insurrection Act — means the troops will be limited in what role they will be able to perform. The president has charged National Guard personnel with protecting ICE officials and other federal authorities and employees. They have not been granted the authority to arrest civilians. However, it is feared that the use of military personnel in response to protests, even in a "supportive" role, will raise the risk of violence against civilians.

Generally, the president cannot use the military as a domestic police force. *See* 18 U.S. Code § 1385. The Insurrection Act, which Trump has also threatened to invoke, is an exception to this rule. The Insurrection Act is a federal law that gives the president nearly unchecked powers to use the military as a domestic police force. The Insurrection Act of 1807 authorizes

the president to deploy military forces inside the U.S. to suppress rebellion or domestic violence or to enforce the law. The Act states, in part:

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

10 U.S.C. § 252. The act intends to allow the president to use the military to assist civilian authorities when they are overwhelmed by an insurrection, rebellion, or other civil unrest or to enforce civil rights laws when state or local governments cannot or will not enforce them.

Under the Act, the president can decide when and where to deploy military forces domestically. See 10 U.S.C. § 251-253. The Insurrection Act's failure to define more precisely what situations may trigger it, combined with the Supreme Court's ruling in *Martin v. Mott*, 25 U.S. 19 (1827), has created a situation where President Trump has almost limitless discretion to deploy active-duty federal troops or federalized National Guard troops to suppress a "rebellion" or otherwise advance his political agenda.

President Trump has repeatedly said he might use the military to suppress domestic protests, raid sanctuary cities, or defend the Southern border from an "invasion." President Trump's invocation of the Insurrection Act and the domestic deployment of active-duty troops, who are trained for combat overseas, poses a real danger to the general public. Military troops are not trained for, lack experience with, and are ill-equipped to engage in civilian law enforcement. Trump's invocation of this dangerous weapon to suppress protests could lead to restrictions on Americans' right to peacefully assemble, or worse, bloodshed.

Unfortunately, unless Congress acts to reform this antiquated law, there is little anyone can do to stop Trump from invoking the Act, which poses a serious risk to NEA leaders, members, and staff who choose to express their views through protest.

V. New Anti-Protest State Laws

Since 2017, state lawmakers and policymakers have introduced more than 200 proposals to reduce the scope of this right. These anti-protest laws have significantly limited the right to peacefully assemble in several states. In other states, these laws have curtailed individuals' right to protest or increased the criminal penalties for protest activity subsequently deemed unlawful. While the First Amendment limits the government's ability to regulate speech in public forums, states can enact "time, place, and manner" restrictions. In addition to these restrictions, some states have increased penalties for blocking traffic during protests, granted civil or criminal immunity to drivers who injure protesters, and passed anti-mask laws

prohibiting people from concealing their identity. Local ordinances may regulate protests by, for example, requiring permits for demonstrations that require street closures or use of sound amplification.

Below are a few examples of the types of state laws that have been enacted to limit individuals' right to peacefully assemble:

A. *Arizona*

In 2017, the Arizona State Legislature passed HB 2007, creating harsh penalties for protesters who conceal their identity. As a result, individuals who are criminally prosecuted for acts committed during a protest may face harsher sentencing if they wore a mask or disguise.

B. *Florida*

In 2021, the Florida legislature passed House Bill 1/SB 484. The law expanded the definition of "riot" and increased the criminal penalties for those who participate in one or "incite" others to join one.

In 2024, the Florida legislature passed House Bill 275. This law created new criminal penalties and expanded civil liability for protests near "critical infrastructure." Under the law, entering onto critical infrastructure property with notice that such entrance was prohibited is a third-degree felony offense.

C. *Georgia*

In 2017, the Georgia State Legislature passed the "Back the Badge Act." This law increased the criminal penalties for intentionally or recklessly blocking "any highway, street, or sidewalk." The law also created criminal penalties for individuals who commit assault and battery against a "peace officer, correctional officer, emergency health worker, firefighter, highway emergency response operator, jail officer, juvenile correctional officer, or probation officer."

D. *North Carolina*

In 2024, the North Carolina legislature enacted House Bill 237 over Governor Cooper's veto. The law increases penalties for protestors who impede traffic on a highway or street during a demonstration or break any law while wearing a mask. It also expands the authority of law enforcement to require individuals to remove masks for identification purposes.

E. *Oregon*

In 2023, the legislature passed HB 2772. The bill created a sweeping new crime of "domestic terrorism," defined as intentionally destroying, substantially damaging, or attempting to destroy or substantially damage "critical infrastructure," with the intent to disrupt the services provided by critical infrastructure.

F. Texas

In 2019, the Texas legislature passed House Bill 3557. The law created new criminal penalties and expanded civil liability for protests near oil and gas pipelines and other infrastructure facilities.

VI. Conclusion

The U.S. Constitution guarantees certain free speech rights, but that does not always mean that law enforcement officers will respect your rights or that a court will uphold them. In several states, anti-protest laws have created significant risks for protestors, including the risk of civil liability and increased criminal penalties. And the Trump Administration's deployment of military troops to quell protests and threatened invocation of the Insurrection Act poses a serious threat to the safety of peaceful demonstrators. Given these circumstances, we encourage you to familiarize yourself with state and local laws, prepare a safety plan before you go to the protest, and know what to do if you are arrested.