

Know Your Rights at the Nebraska State Capitol

NOTE: This Know Your Rights information is not intended to provide legal analysis regarding the Constitutionality of any cited statutes, ordinances, rules and/or regulations.

The First Amendment to the U.S. Constitution as well as Nebraska State Constitution Article I § 5 and § 19, create a bedrock for American values and the ACLU of Nebraska's mission. Freedom of speech, the press, association, assembly, and petition: This set of guarantees, protected by the First Amendment, comprises what we refer to as our freedom of expression. It is the foundation of a vibrant democracy, and without it, other fundamental rights, like the right to vote, would wither away.

Speech at the Nebraska State Capitol Building ("Capitol") and its grounds have often been the epicenter of conversations on the First Amendment. In fact, the Nebraska Constitution specifically provides that the doors of the State Capitol shall remain open while the Legislature is in session.

Your speech matters, particularly in the Capitol and before the state legislature, which is often ground zero in the fight for civil liberties and a source of unprecedented assaults on our most fundamental rights.

Do I have the right to demonstrate or rally at the Capitol?

Generally, all types of expression are constitutionally protected in traditional "public forums" such as certain public spaces within the Capitol² including but not limited to the Rotundas, as well as the adjacent streets, sidewalks and parks. However, this does not mean that the Constitution completely protects **all** types of free speech activity in **every** circumstance in **all** locations.

Inside the Capitol, law enforcement and government officials are allowed to place certain nondiscriminatory and narrowly drawn "time, place, and manner" restrictions on the exercise of First Amendment rights. To pass constitutional muster, any such restrictions must apply to all speech regardless of its point of view.

The Nebraska State Patrol ("NSP") has the authority to promulgate and enforce rules governing security at the Capitol. The "Rules and Regulations Governing Security" can be found at <https://bit.ly/NSP-regs> and contain specific information regarding: public hours, signs, prohibited behavior, violations of regulations, orders to leave, and searches.

What are my general protest rights?

Your rights are strongest in traditional public forums, such as streets, sidewalks, and parks. Generally, you don't need a permit to march on sidewalks or to gather in public spaces like parks. However, you may need a permit depending on your event and the City of Lincoln's ordinances. As such, it's best to check with City officials or legal counsel about permit requirements prior to any event.

The Capitol has issued Guidelines for rallies, news conferences, and displays. These are available at <https://bit.ly/CAP-events>. Whether on the street, sidewalk, park, or at the Capitol, a permit cannot be denied because the event is controversial or will express unpopular views, or when the event is in response to an emerging current event.

The First Amendment further protects actions that symbolically express a viewpoint. Examples of symbolic forms of speech include wearing masks, clothing, pins or buttons, stickers, and costumes or holding a candlelight vigil. You cannot be forced to remove or change your clothing. However, symbolic acts and civil disobedience that involve illegal conduct, such as blocking entrances or exits, are outside the realm of constitutional protections and can sometimes lead to arrest and conviction.

Counterprotesters also have free speech rights. Government officials and law enforcement must treat protesters and counterprotesters equally. Government officials and law enforcement are permitted to keep antagonistic groups separated but should allow them to be within sight and sound of one another, such as separating opposition and support in the overhead Capitol balconies.

When you are lawfully present in any public space, you have the right to photograph and/or video record anything in plain view, including law enforcement.

What happens if law enforcement issues an order to disperse at a protest or rally I am attending at the Capitol?

Shutting down a protest through a dispersal order must be law enforcement's last resort. Law enforcement officers may not break up a gathering unless there is a clear and present danger of riot, disorder, interference with traffic, or other immediate threat to public safety. If officers issue a dispersal order, they must provide a reasonable opportunity to comply, including sufficient time and a clear, unobstructed exit path. Individuals must receive clear and detailed notice of a dispersal order, including how much time they have to disperse, the consequences of failing to disperse, and what clear exit route they can follow, before they may be arrested or charged with any crime.

What should I do if I think my rights are being violated at the Capitol?

- If you are stopped by law enforcement while at the Capitol, stay calm. Make sure to keep your hands visible. Don't argue, resist, or obstruct the officers, even if you believe they are violating your rights. Point out that you are not disrupting anyone else's activity and that the First Amendment protects your actions. Ask if you are free to leave. If the officer says yes, calmly walk away.
- If you are placed under arrest, you have a right to ask why. Otherwise, say you wish to remain silent and ask for a lawyer immediately. Don't say anything or sign anything without a lawyer. You have the right to make a local phone call, and if you are calling your lawyer, officers are not allowed to listen.
- Generally, you do not have to consent to a search of yourself or your belongings. If you consent, it can affect your case later in court. However, the Capitol rules and regulations indicate that all items in your possession are subject to search.
- Law enforcement officers may "pat down" your clothing if they suspect you have a weapon and may search you after an arrest. Officers may not confiscate or demand to view your photographs or video without a warrant, nor may they delete data under any circumstances. However, they may order you to cease activities that are truly interfering with legitimate law enforcement operations.
- If you believe your rights have been violated at the Capitol, write down everything you remember, including the officers' badge and patrol car numbers and the agency they work for. Get contact information for witnesses and take photographs of any injuries. Once you have all of this information, you can file a written complaint with the agency's internal affairs division or civilian complaint board. You may also contact the ACLU of Nebraska at aclunebraska.org/gethelp.

DISCLAIMER: This resource is general information for individuals participating in protests, or observing legislative debate at the Capitol and its grounds. It is not intended to provide legal analysis regarding the constitutionality of any cited ordinances, rules and/or regulations. This guide does not entitle you to legal advice from the ACLU of Nebraska and is not an offer by the ACLU of Nebraska to represent you as your attorneys. Please contact your attorney or the ACLU of Nebraska for more information. For information on how to request legal assistance, visit aclunebraska.org/gethelp. Citations for this resource are available at aclunebraska.org/kyr-capitol.