



# THE CITIZEN ADVOCACY CENTER'S

## Can a Government Body Require Fees or Insurance for Public Assembly?

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### Introduction

The people's freedom to assemble, especially when exercising their freedom of political speech, is a fundamental right under the First Amendment. Restrictions put in place for public assembly affects protests, rallies, and other similar activities and can effectively deter or even prevent people from assembling and speaking out. Financial requirements instated by the government, such as assembly fees and evidence of insurance, can function as barriers that prevent people from being able to exercise their First Amendment rights. Though this is the case, local government bodies commonly require individuals and groups wishing to assemble to pay fees or obtain insurance in order to hold their event.

This guide provides a general explanation as to whether the government can require individuals who wish to assemble to make a political statement, such as protesters, to pay fees or purchase insurance in order to assemble. It outlines reasonable regulations a government may require for paying fees or obtaining insurance in order to get an assembly permit. This guide is meant to provide information about fee and insurance requirements for assembly and should not be taken as legal advice. If you have legal questions, please contact an attorney.

182 N. York St.  
Elmhurst, IL  
60126

Phone  
(630) 833-4080

Fax  
(630) 833-4083

Website  
[citizenadvocacycenter.org](http://citizenadvocacycenter.org)

## Can the Government Require Me to Pay a Fee for a Permit to Assemble, Such As in Protest?

Generally, the answer is “YES.”

The government may charge fees when used to offset administrative costs and maintaining public order based on the type of event. Factors such as size of the event, location, and whether it is a march or a rally may play roles in determining possible fees. All governmental restrictions must be content-neutral, including fees and insurance. *The fee may not be calculated based on the underlying message being conveyed by the protest.* The government may not require higher fees because of the content of that message, no matter how controversial a message is or how few people support that message.

A valid example: “Parades, rallies, and protests shall be required to pay a fee of up to \$100 based on the number of reasonably expected participants.”

An invalid example: “Rallies shall be required to pay a fee of \$100. Religious rallies shall be required to pay a fee of \$200.”

The government may not charge additional fees based on how it expects the public to react to the content of the protest. Even if there is a particularly controversial message, government may not charge additional fees based on what it anticipates will be the reaction to that message.

For example, the Supreme Court has held that an additional fee for police services was unconstitutional because the fee was based on expected negative reactions to the protestors’ speech. The Supreme Court found this restriction was not content-neutral because in order to determine the necessary cost of security, the government had to estimate the public’s reaction to the content of the protest; content-based regulations on political speech violate the First Amendment. (For more on this, read the 1992 Supreme Court case [\*Forsyth County, Georgia v. Nationalist Movement\*](#), which can be found at 505 U.S. 123.) On the other hand, government may charge additional fees for additional police services based on the number of people participating in the event, which is a content-neutral aspect of the event. Or, for another example, fees may differ between a sedentary rally versus a moving parade, the latter which may need more police presence because of the geographic size of the assembly.

## **Can I Be Required to Purchase Insurance?**

Generally, the answer is “YES.”

The government may require insurance in order to cover any damage to government property as well as to people involved in or around the event. Many municipalities and counties require protesters that wish to protest on public property to purchase insurance in order to be given a permit.

*Insurance requirements may be based on the size of the event.* The government can require insurance when an event reaches or organizers may reasonably expect more than a certain number of participants.

*Insurance requirements may be based on the nature of the facility being used.* The government may require more insurance for protests in locations that include expensive equipment, potentially hazardous terrain, and other similar factors unrelated to the message behind a protest.

Insurance requirements may not be based on the content of the event. The government cannot raise insurance requirements based on a rally’s message which includes requiring protestors to purchase more insurance coverage for an event that is more controversial.

A valid example: “Insurance is required for parades that can reasonably be expected to involve more than 50 participants.”

A valid example: “Protests taking place on a public road shall be required to obtain an additional \$500,000 in insurance coverage.”

An invalid example: “Groups that wish to hold a protest shall be required to obtain \$1 million of insurance in order to be issued a permit. Groups that wish to hold a protest with a political message shall be required to obtain \$2 million of insurance in order to be issued a permit.”

## **What if I Cannot Afford the Fee or Insurance or if My Event Cannot Obtain Insurance?**

The cost of the event can serve as a barrier for groups that are unable to pay for that cost. Moreover, insurance companies may refuse to provide insurance for events with extremely controversial topics. Courts are reluctant to support insurance requirements when the government is unwilling to exempt protesters that cannot afford fees and insurance, or when they cannot obtain insurance.

The Federal District Court for the Southern District of Florida found that a town's \$1 million insurance coverage requirement was unconstitutional when challenged by an individual that could not afford the cost. Though the cost to the individual was only several hundred dollars, the individual was unable to pay due to unemployment. The district court held that the failure of the statute to provide another way for individuals who could not afford insurance to still be able to exercise their First Amendment rights was unconstitutional. (For more, read the 1993 case *Pritchard v. Mackie*, which can be found at 811 F. Supp. 655.)

The United States Court of Appeals for the Seventh Circuit, which includes Illinois, held that an insurance requirement could not be applied to parties that were completely unable to obtain insurance. Evidence to show that the plaintiff could not obtain insurance included that they spent multiple months searching for available insurance coverage and contacted 13 different companies and brokerages, particularly those that specialized in unusual lines of insurance, but couldn't secure coverage because of the controversy their message stirred. Because the restriction and the ability to obtain insurance was tied to the content of the message, it was a content-based restriction, and the court quoted the Supreme Court, "(A)bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." The court found that the prohibitive provision was unconstitutional but the government conceded that the provision could not be applied to the plaintiff, so the court declined to reach the question of whether insurance could be required in any circumstance. (For more, read the 1978 case *Collin v. Smith*, which can be found at 578 F.2d 1197.) Presumably, an insurance requirement will stand if it allows exceptions for those who cannot obtain insurance.

Often, local government bodies may already be making exceptions for individuals or groups that cannot afford the costs or are unable to obtain insurance. Some municipal codes provide for exceptions for these circumstances explicitly. Even if the municipal code does not contain an exemption, local officials should be willing to provide exemptions for groups unable to secure insurance.

### **For More Information:**

If you have questions about the law for your local government or if you are faced with having to purchase unaffordable or unobtainable insurance, the best place to start is by contacting your local government officials for more information about fee and insurance requirements and possible exemptions. If you have any questions regarding your protection under the First

Amendment, contact your attorney, the Citizen Advocacy Center, or the American Civil Liberties Union in Illinois at (312) 201-9740.

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