



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
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**“Trucker Convoys” or Other Vehicular Demonstrations:  
Law Enforcement Guidance on Constitutional Principles**

Anti-vaccine and anti-government activists are currently mobilizing “trucker convoys” to arrive in nation’s capital this week. Convoy organizers have [indicated](#) that their protests will “focus on complaints against COVID-19 restrictions, grievances against undocumented immigrants, foreign oil imports, critical race theory and the Black Lives Matter movement,” as well as “justice for Ashli [Babbitt],” a woman who was fatally shot inside the U.S. Capitol on January 6, 2021, as she attempted to climb through a barricaded window. Organizers have circulated planned convoy routes to D.C. from across the country, and several convoys are now underway. Convoy organizers have made clear that a goal of their demonstrations is to disrupt order in and around Washington, D.C.

This guidance outlines legal principles and best practices for law enforcement response.

**Governments May Impose Content-Neutral Time, Place, and Manner Restrictions on Speech and Assembly in Public Forums.**

The First Amendment protects Americans’ right to assemble and express their views through peaceful protest. Although the First Amendment limits the government’s ability to regulate speech in public forums, it does not guarantee a right to express oneself “at all times and places or in any manner that may be desired.”<sup>1</sup> Well-settled First Amendment principles permit the government to act in ways that burden expressive freedoms if it can demonstrate an adequate justification for doing so.

So long as the government’s regulation of speech is “content neutral”—such that it regulates only the time, place, or manner in which speech can occur, but not the substance of the speech itself—then it need only: (1) be “narrowly tailored to serve a significant governmental interest” and (2) “leave open ample alternative channels for communication of the information.”<sup>2</sup> As relevant to the convoys, the Supreme Court has held that the government has a “substantial” interest in maintaining public property in a clean and usable condition, ensuring that streets and sidewalks remain safe and accessible, and protecting against threats to human safety.<sup>3</sup> To the extent the convoys threaten these government interests, law enforcement intervention would likely be justified so long as it is not “substantially broader than necessary to achieve the government’s interest.”<sup>4</sup>

**There is No Political Activity Exception to Public Safety Laws.**

Public safety is a legitimate and compelling governmental interest that can justify certain restrictions on speech and assembly. The government has a compelling interest in protecting public safety by ensuring the free flow of traffic, keeping open access for emergency vehicles, and protecting

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<sup>1</sup> *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981).

<sup>2</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quoting *Clark v. Cmty. for Creative Non-Violence*, 468 U.S. 288, 293 (1984)).

<sup>3</sup> See, e.g., *Thomas v. Chicago Park Dist.*, 534 U.S. 316, 322 (2002); *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 768 (1994); *Heffron*, 452 U.S. at 651.

<sup>4</sup> *Madsen*, 512 U.S. at 800.

pedestrians. Enforcing traffic laws applicable to the general public, without regard to viewpoint, is a clear example of a reasonable time, place, and manner regulation.

### **The First Amendment Does Not Protect Unlawful Conduct or Incitement to Imminent Lawless Activity.**

Although the First Amendment protects speech no matter how hateful, racist, or offensive, it does not protect violent or unlawful conduct, even if the person engaging in it intends to express an idea. Nor does the First Amendment protect speech that incites imminent violence or lawless action. Under the “imminent lawless action” test, speech is not protected by the First Amendment if the speech is “directed to inciting or producing imminent lawless action and is likely to produce such action.”<sup>5</sup> Therefore, if participants in the convoy are violating traffic or other public safety laws, or inciting others to do the same imminently, that conduct would not be protected as expressive activity under the First Amendment.

### **Best Practices for Responding to Convoy Activity**

There are two broad categories within which the convoy activity could fall. Law enforcement responding to the convoys should assess the nature of the underlying conduct to evaluate whether law enforcement intervention is appropriate.

1. **Drivers involved in peaceful and lawful demonstration.** If drivers are participating in a political demonstration—e.g., in a procession displaying political insignia, flags, etc.—and they are not violating state or local laws or threatening public safety, the activity is likely protected by the Constitution. Law enforcement may ensure that traffic keeps flowing safely, including by directing traffic at intersections and helping pedestrians to safely cross streets, for example. Law enforcement should endeavor to foster the protected activity while protecting public safety.
2. **Drivers demonstrating but obstructing traffic or breaking laws.** If drivers are participating in a political demonstration but are obstructing traffic, police may issue directions to restore the free flow of traffic. Where drivers are violating traffic or other laws, law enforcement may issue citations or make arrests depending on the laws being violated and the severity of the situation. Law enforcement should not discriminate in the enforcement of traffic or other laws based on the viewpoint of the demonstrators.

### **Bottom Line**

While the First Amendment protects a wide range of expressive speech and conduct, it does not protect law-breaking or incitement to imminent lawless activity. State, local, and federal governments have a substantial interest in maintaining public safety and law and order, and should respond to illegal conduct accordingly, irrespective of any underlying political viewpoint.

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<sup>5</sup> *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).