

The Breakfast Club

Constitutional Minute for 27 September 2022

More on Constitutional Protests at the Supreme Court

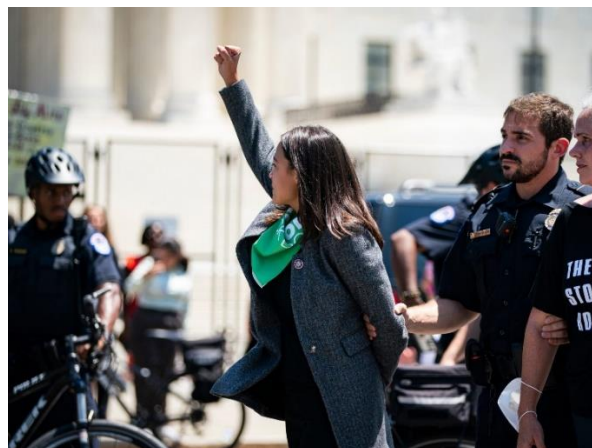
Breakfast Clubbers brought up good points and questions the week I explained the Right of Protest, so I did a little more digging.

Protesting at the Supreme Court. This is covered by [Pub. L. 107-217](#), passed Aug. 21, 2002. It is encoded at Title 40 Section § 6135 of the US Code, which states simply:

“It is unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement,” as the people in the photo seem to not know (actually they are either in the street in front of the court or on the sidewalk in front of the Capitol, it’s hard to tell).



Here's AOC forgetting that if you're arrested and "handcuffed" you probably shouldn't try to raise a protest fist. Cute.



On June 6th, 2022, a District Court judge in Washington, D.C. declared Title 40 Section § 6135 to be unconstitutionally vague (I would agree); the rule could have been interpreted to ban a school field trip standing in front of the court. So, three days later Supreme Court officials announced a new set of rules about the protests. The new rules are more specific than the old. They ban "demonstrations" from the plaza (notably, not the sidewalk). "Demonstrations" are defined as "demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers." But the regulation clarifies that "casual use" of the grounds, particularly of the kind that isn't likely to attract a crowd, is allowed. "This regulation does not apply to the perimeter sidewalks around the Supreme Court grounds." Notice that the Court is able to set its own rules concerning demonstrations. Why? Because Congress gave the Court and other D.C. agencies latitude to set their own rules on this subject. See [here](#) for more history on the subject.

Protests at Justices homes. Title 18 Section 1507 states: "Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both."

Virginia has a similar, but more general statute: §18.2-419. Picketing or disrupting tranquility of home.

"Any person who shall engage in picketing before or about the residence or dwelling place of any individual, or who shall assemble with another person or persons in a manner which disrupts or threatens to disrupt any individual's right to tranquility in his home, shall be guilty of a Class 3 misdemeanor. Each day on which a violation of this section occurs shall constitute a separate offense."

The question was asked why did Governor Youngkin demand the DOJ enforce the federal statute rather than enforce Virginia's? The marshal of the Supreme Court reportedly asked both Maryland and Virginia Governors to enforce laws in each state. In response, Youngkin called on Fairfax County Board of Supervisors to erect barriers around the three justices homes who live in the county (Barrett, Alito and Thomas). The Democrat-majority BOS rejected the request as an "unwarranted infringement on the right of protest."

The Right of Protest is deeply embedded in the American political structure and, despite regulations and restrictions, is not going away. The political Left has turned protesting into a highly synchronized activity. I don't doubt there are specialists in protests on their payroll. As one Breakfast Clubber has pointed out, perhaps it is time the Political Right learned to protest as well.

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