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PREACHING AND DISTRIBUTING LITERATURE IN PUBLIC FORUMS

Religious Speech is Protected by the United States Constitution

The U.S. Constitution gives religious speech the utmost protection.¹ Indeed, the right to advocate or share a religious viewpoint implicates one primary reason the First Amendment was adopted.² Similarly, leafleting is fully protected by the First Amendment.³ As the Supreme Court has stated:

[H]and distribution of religious tracts is an age-old form of missionary evangelism –as old as the history of printing presses. It has been a potent force in various religious movements down through the years. . . . This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.⁴

Public Forum Defined

Public forums are government-owned properties which are inherently open to free speech activities – parks and sidewalks being the quintessential examples:⁵

Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.⁶

¹ *Capitol Square Review & Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995).

² *Thomas v. Collins*, 323 U.S. 516, 545 (1945) (Jackson, J., concurring).

³ *United States v. Grace*, 461 U.S. 171, 176-77 (1983).

⁴ *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 161 (2002) (quoting *Murdock v. Pennsylvania*, 319 U.S. 105, 108-09 (1943)).

⁵ *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45 (1983).

⁶ *Hague v. Committee for Industrial Organization*, 307 U.S. 496, 515 (1939).

Moreover, an area that the government has voluntarily and intentionally opened to the general public for public discourse is also a public forum.⁷ For example, if a public university opens its campus up for non-student groups to speak on a variety of topics, it has created a public forum.⁸

Government Restrictions of Speech in a Public Forum

The government is very limited in its ability to regulate speech within a public forum. Regulations must meet certain requirements. First, the regulation must be content-neutral.⁹ In other words, it cannot suppress speech merely because the speech is religious. Second, it must be a reasonable time, place, or manner restriction.¹⁰ This refers to a restriction that minimizes disruption of a public place such as a decibel sound limit or park curfew hours.¹¹ Third, it must advance a substantial government interest, such as protecting public safety. And fourth, it must leave open ample alternative channels of communication.¹² Thus, it is rare that a total ban on preaching or distributing literature in a public forum would be upheld.

Moreover, the fact that speech may be unpopular or viewed by some as offensive is not, by itself, a legitimate reason for the government to silence it.¹³ There must be legitimate, tangible reasons for the restrictions. Police officers may not “blindly invoke safety and congestion concerns without more” to justify the suppression of unpopular speech.¹⁴ Similarly, restricting speech because of the unpleasant reaction it may create in others is unacceptable.¹⁵ These sorts of restrictions are consistently held unconstitutional.

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⁷ *Pleasant Grove City v. Summum*, 555 U.S. 460, 469-71 (2009).

⁸ *Bowman v. White*, 444 F.3d 967, 976-79 (8th Cir. 2006).

⁹ *Reed v. Town of Gilbert*, 135 S.Ct. 2218, 2228 (2015).

¹⁰ *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989).

¹¹ *Id.*

¹² *Id.*

¹³ *Morse v. Frederick*, 551 U.S. 393, 409 (2007).

¹⁴ *Weinberg v. City of Chicago*, 310 F.3d 1029, 1038 (7th Cir. 2002); see also *Deegan v. City of Ithaca*, 444 F.3d 135 (2d Cir. 2006).

¹⁵ *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 134 (1992).