



MEMORANDUM

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Sharing Your Faith/Witnessing

The streets and sidewalks of the United States are an open forum for evangelism. Government owned property is divided into three categories: a public forum, a limited public forum and a nonpublic forum.¹ In general, the more public the forum, the more likely that the First Amendment controls.² The Constitution guarantees the right to preach the Gospel in public places. The Supreme Court's many cases involving preaching (or other speech activities) on the streets provide ready answers to those who challenge your right to give away religious tracts, pamphlets, and other printed material and to speak with people on the street about your faith.

What laws protect my right to witness and share my faith in public?

When you give away religious tracts in public places—streets, sidewalks, and parks—you are engaged in a form of speech and publication protected by the United States Constitution and civil

¹ JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW 1263 (8th ed., 2010) . A public forum is government property that has traditionally been held open to public discourse such as public sidewalks and public parks wherein the government generally impose content-neutral times, place or manner restrictions. *Id.* A limited public forum refers to a government-owned channel of communication or government-owned property that is not traditionally open to public discourse but, nonetheless, the government has chosen to open it up to public discourse for a time. *Id.* A nonpublic form is government property or a government owned channel of communication that has not traditionally been held open to public discourse and the government has not chosen to open to such discourse. *Id.* at 1263. Examples would include a public-school classroom when class is in session. *Id.*

² *Id.*

rights laws. When you speak with someone about the Gospel while in a public place, you enjoy constitutional protection.

As American citizens, we are protected by the United States Constitution from government interference with our right of free speech. This includes the right to evangelize. Also, the Constitutions of every state in our country include guarantees of free speech, which are at least as protective of free speech as the federal Constitution.

The First Amendment to the United States Constitution provides, “Congress shall make no law . . . abridging the freedom of speech,” and the Fourteenth Amendment states, “[N]or shall any State deprive any person of life, liberty, or property, without due process of law” The Supreme Court has ruled that these two provisions of the Constitution severely limit the power of federal, state, and local governments to interfere with speech activities on sidewalks, streets and in parks. Moreover, Supreme Court “precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression.” *Capitol Square & Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995).

It is a constitutional axiom that the distribution of free religious literature is a form of expression protected by the First Amendment. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981); *Lovell v. City of Griffin*, 303 U.S. 444 (1938). As the Supreme Court unequivocally held in *Murdock v. Pennsylvania*:

The hand 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. . . . It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. 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.

319 U.S. 105, 108–09 (1943) (footnotes omitted).

Careful readers should note the following three basic rules regarding the First Amendment:

- First, it is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.
- Second, the Constitution recognizes that there are no false ideas.
- Third, the government cannot tell people what they must or must not say.

Nonetheless, careful readers should also note that constitutional rights are not absolute.

In addition, the First Amendment through the free exercise clause protects religion and accordingly:

The Free Exercise Clause . . . withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions there by civil authority.” It bars “governmental regulation of religious *beliefs* as such,” prohibiting misuse of secular governmental programs “to impede the observance of one or all religions or . . . to discriminate invidiously between religions . . . even though the burden may be characterized as being only indirect.”²⁵⁵ Freedom of conscience is the basis of the Free Exercise Clause, and government may not penalize or discriminate against an individual or a group of individuals because of their religious views nor may it compel persons to affirm any particular beliefs.³

Am I soliciting when I hand out religious literature and share my faith?

No! Giving away free Gospel tracts and talking to people about salvation are not the same thing as soliciting. The Supreme Court has held that there is a difference between soliciting and leafleting. In *United States v. Kokinda*, 497 U.S. 720 (1990), the Supreme Court permitted the postal service to enforce a rule against asking (soliciting) for donations on postal property. However, the Court suggested that it would reject a rule that banned free distribution of literature on such properties, stating:

As residents of metropolitan areas know from daily experience, confrontation by a person asking for money disrupts passage and is more intrusive and intimidating than an encounter with a person giving out information. One need not ponder the contents of a leaflet or pamphlet in order mechanically to take it out of someone's hand, but one must listen, comprehend, decide and act in order to respond to a solicitation.

Id. at 734 (plurality).

In *ISKCON v. Lee*, 505 U.S. 672 (1992), and *Lee v. ISKCON*, 505 U.S. 830 (1992), the Supreme Court considered a restriction on leafleting and another restriction on solicitation of donations in

³*Free Exercise of Religion*, JUSTIA, US Law, <https://law.justia.com/constitution/us/amendment-01/03-free-exercise-of-religion.html>.

airport terminals. The Court concluded that solicitation is separate from literature distribution and that, despite the fact that the airport terminals were nonpublic forums, a regulation barring the distribution of free literature in the terminals was unreasonable and unconstitutional. Accordingly, while a city official may, in some instances, not allow solicitation, such a regulation may not be broadened to include literature distribution. As long as you are giving away your literature for free, and not asking for donations, you are engaging in the most protected form of speech.

Where can I go to hand out Gospel tracts to the public?

You can go to any publicly owned street, sidewalk, or park. In legal terms, streets, sidewalks, and parks are called “traditional public forums.” The Supreme Court has held that a traditional public forum is government property that is traditionally opened to public speech, *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939), including such places as streets, sidewalks, and parks, *see United States v. Grace*, 461 U.S. 171, 177 (1983). That means that these are the places that are open to public speeches, leafleting, newspaper distribution, political rallies, public marches, and other speech activity.

You are not merely limited to streets, parks, and sidewalks for tract distribution; courts have found many other places to be appropriate. Subject to local laws and ordinances, airport terminals, bus and train stations, and walkways surrounding government-owned coliseums, stadiums, and memorials may be appropriate locations for leafleting. *See, e.g., Bd. of Airport Comm’rs v. Jews for Jesus*, 482 U.S. 569 (1987) (resolution banning all first amendment expression in the public forum of an airport was unquestionably overbroad); *Grace*, 461 U.S. at 180 (holding that the sidewalks surrounding the Supreme Court constitute a public forum); *Jews for Jesus v. Mass. Bay Transp. Auth.*, 984 F.2d 1319 (1st Cir. 1993) (overturning a complete ban on noncommercial expressive activity in a train station).

Sometimes a city official will get confused about these “traditional public forums.” For example, in *Frisby v. Schultz*, 487 U.S. 474 (1988), the Supreme Court rejected a Wisconsin city’s argument that the streets and sidewalks of a residential area were not the sort of “traditional public forums” that the Court had held were generally open to free speech and activities.

The Court noted in *Frisby*, however, that some time, place, and manner restrictions are permissible depending on the nature of the streets at issue. *Id.* at 481. For example, a rule against parades between sunset and sunrise on residential streets serves a valid purpose of protecting the peace of

a neighborhood when most residents are resting. It is wise to look up local laws and ordinances ahead of time. You can always call the local police station if you have questions.

If I am witnessing on the public sidewalk in front of a business, am I “loitering,” and can I be required to move away from the business?

No! “Loitering” is the criminal offense of remaining in a certain place (such as a public street) for no apparent reason.” BLACK’S LAW DICTIONARY 1027 (Bryan A. Garner ed., 9th ed. 2009). Evangelism activities, however, are a legitimate purpose for standing on a public sidewalk. *See Chicago v. Morales*, 527 U.S. 41, 53 (1999) (noting the difference between remaining in one place with no apparent purpose and conduct intended to convey a message).

Do not stand in the middle of the street where you will be obstructing the flow of traffic. The government may prohibit this in the interest of vehicle and pedestrian safety. *See, e.g., SunSentinel Co. v. Hollywood*, 274 F. Supp. 2d 1323 (S.D. Fla. 2003). Your right to use the sidewalks, streets and parks is not a license to make them unusable for others, e.g., barricading a sidewalk, allowing only those who will take a tract to pass. *See, e.g., Cox v. Louisiana*, 379 U.S. 536, 555 (1965).

Do I have the same rights to witness on the streets of a town in which I don’t live?

The constitutional protection of free speech under the First Amendment applies to all citizens and aliens and extends throughout the United States. Thus you are not limited to sharing your faith on the streets, sidewalks, and parks in your town. The Supreme Court has acknowledged that “speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection.” *Connick v. Myers*, 461 U.S. 138, 145 (1983). Many cases which the ACLJ has won involve visitors from other towns or other states.

What should I do to get started witnessing and sharing my faith in public?

First, devote time to prayerful preparation. Next, select a location. You may choose a place, because of the opportunity to reach many people, outside a sports stadium or near an historic monument. You may also have a target group in mind. For example, if your burden is for young people, you will want to pick locations where they pass by or gather.

If the location you choose is not a nice, simple sidewalk location, you should speak to the appropriate authority to discover what rules have been adopted to govern your activities. (This does not mean that you must always accept, as good law, a rule barring leafleting.) Check with a county clerk, the police department, the security office at the stadium, or similar offices. This will let you know what to expect when you witness.

If you are in a public place and are stopped from distributing free literature, do not assume that it was correct for you to be stopped. Too many Supreme Court cases have been decided against governments on these matters to assume that the government is always right. Just by challenging them, the government often changes their policies.