

Fromm/Great Free Speech Cases/Carcieri/Session 7
The Public Forum and Time/Place/Manner Restrictions

Hague v. CIO (1939)

“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 part of the privileges, immunities, rights, and liberties of citizens. The privilege to use the streets and parks for communication of views on national questions may be regulated in the interest of all; but it must not, in the guise of regulation, be abridged or denied.”

Heffron v. International Society for Krishna Consciousness (1981)
(Justice White, for the majority)

F/P: A Minnesota State Fair rule prohibited the sale or distribution of any merchandise, including written or printed material, except from booths rented to all applicants in a nondiscriminatory manner on a first-come, first-served basis. ISKCON, a religious society espousing the views of the Krishna religion, challenged the rule. It asserted that the rule suppressed the practice of Sankirtan, a religious ritual in which members go into public places to distribute or sell religious literature and to solicit donations for the support of the religion. The State High Court struck down the rule.

I: Whether the State Fair rule violates the First and 14th Amendments.

H: No (reversed); the rule passes the test the Court has developed for such laws. Reasonable time, place, and manner restrictions will be upheld so long as:

- 1) They are justified without reference to the content of the regulated speech;
- 2) They serve a significant governmental interest; and
- 3) They leave open ample alternative channels for communication of the information.

R: The state rule is content-neutral, as it applies “evenhandedly to all who wish to distribute and sell written materials or to solicit funds ... in a straightforward first-come, first-served system.”

R: Given the large number of exhibitors and persons attending the Fair (i.e., an average daily attendance of over 100,000), ensuring the public safety and convenience that the orderly movement of the crowd advances is a significant governmental interest.

R: Although the State court held that an exemption from the rule for ISKCON would not defeat the State’s interest, “there would be a much larger threat to the State’s interest in crowd control if all other religious, nonreligious, and noncommercial organizations could likewise move freely about the fairgrounds distributing and selling literature and soliciting funds at will.”

R: Alternative means of crowd control such as penalizing disorder and disruption, or limiting the number of solicitors, would probably not deal adequately with the problem.

R: Since the rule does not prevent ISKCON from practicing Sankirtan anywhere outside the fairgrounds, or even walking with and talking to patrons inside the fairgrounds and inviting them to a booth ISKCON has rented, the rule allows ample alternative channels for the communication.

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Members of City Council v. Taxpayers for Vincent (1984)

F: A provision of the Los Angeles Municipal Code prohibiting the posting of signs on public property. Appellees, who posted dozens of temporary signs throughout an area where they would be unattended until removed, challenged the law on free speech grounds.

H/R: The Court upheld the provision:

- 1) It is content-neutral;
- 2) Avoiding visual clutter is a significant state interest;
- 3) The law is narrowly tailored to advance that interest since the City did no more than eliminate the exact source of the evil it sought to remedy; and
- 4) The law leaves ample alternative modes of communication.

“The mere fact that government property can be used as a vehicle for communication does not make it a traditional or designated public forum. In this case, the tangible medium of expressing the message has an adverse impact on the appearance of the landscape.”

Frisby v. Schultz (1988) (Justice O'Connor, for the Court)

F/P: On six occasions within one month, a group ranging from eleven to 40 abortion opponents picketed on a public street in front of the residence of a doctor who performed abortions. The picketing was orderly and peaceful. Thereafter, the town (a residential suburb of Milwaukee with a population of 4300) enacted a flat ban on all residential picketing, i.e., barring picketing “on or about the residence of any individual.” The lower courts enjoined the ban.

I: Whether the ban violates the First and 14th Amendments.

H: No; while a public street even in a residential area is a traditional public forum, the ordinance passes the *Heffron* test. It is content-neutral, that is, and:

R: Since “there is simply no right to force speech into the house of an unwilling listener, ... the protection of residential privacy ... is a significant governmental interest.”

R: Since the law allows protestors to proselytize door to door, distribute literature, and march through the neighborhood, it leaves open ample alternative channels of communication.

R: “The type of focused picketing here is ... different from more generally directed means of communication Here, the picketing is narrowly directed at the household, not the public. The type of picketers banned by the ordinance generally does not seek to disseminate a message to the general public, but to intrude on the targeted resident ... in an especially offensive way.”

Justices Brennan and Marshall, dissenting:

“To say that picketing may be substantially regulated is not to say that it may be prohibited in its entirety. Once size, time, volume, and the like have been controlled to ensure that the picket is no longer intrusive or coercive, only the speech itself remains, conveyed perhaps by a lone, silent individual walking back and forth with a sign. Such speech ... is banned by the ordinance, which is thus not narrowly tailored to the governmental interest in residential privacy.”

Fromm/Great Free Speech Cases/Carcieri/Session 7, cont'd

ISKCON v. Lee (1992) (Chief Justice Rehnquist for the Court)

F: The Port Authority of New York and New Jersey, which owns and operates three major airports in the New York City area, forbids within the airport terminals the repetitive solicitation of money and the repetitive sale or distribution of any merchandise. The regulation governs only the terminal buildings. It does not restrict such activities on the public sidewalks outside the buildings. ISKCON challenged the rule on First and 14th Amendment grounds.

I: Whether this rule violate ISKCON's free speech rights.

H: No

“The government need not permit all forms of speech on property that it owns and controls.... Where the government is acting as a proprietor, managing its internal operations, rather than acting as lawmaker with the power to regulate or license, its action will not be subjected to the heightened review to which its actions as a lawmaker may be subject....

(Our) cases reflect, either implicitly or explicitly, a forum-based approach for assessing restrictions that the government seeks to place on the use of its property.... Under this approach, regulation of speech on government property that has traditionally been available for public expression is subject to the highest scrutiny. Such regulations survive only if they are narrowly drawn to achieve a compelling state interest.... The second category of public property is the designated public forum, whether of a limited or unlimited character – property that the state has opened for expressive activity by part or all of the public.... Regulation of such property is subject to the same limitations as that governing a traditional public forum.... Finally, there is all remaining public property. Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as it is not an effort to suppress the speaker's activity due to disagreement with the speaker's view....

(T)he government does not create a public forum by inaction. Nor is a public forum created whenever members of the public are permitted freely to visit a place owned or operated by the government....

Airport terminals are not public fora.... Given the lateness with which the modern air terminal has made its appearance, it hardly qualifies for the description of having "time out of mind" been held in the public trust and used for purposes of expressive activity. (Nor is it a designated public forum.)

As commercial enterprises, airports must provide services attractive to the marketplace. In light of this, it cannot fairly be said that an airport terminal has as a principle purpose "promoting the free exchange of ideas." ... To the contrary, ... Port Authority management considers the purpose of the terminals to be the facilitation passenger air travel, not the promotion of expression.... The restrictions here challenged, therefore, need only satisfy a requirement of reasonableness.... We have no doubt that under this standard the prohibition on solicitation passes muster.

We have on many prior occasions noted the disruptive effect that solicitation may have on business. Solicitation requires action by those who would respond: The individual solicited must decide whether or not to contribute (which itself might involve reading the solicitor's literature or hearing his pitch), and then, having decided to do so, reach for a wallet, search it for money, write a check, or produce a credit card.... Passengers who wish to avoid the solicitor may have to alter their path, slowing both themselves and those around them. The result is that the normal flow of traffic is impeded.... This is especially so in an airport, where air travelers, who are often weighted down by cumbersome baggage ... may be hurrying to catch a plane or to arrange ground transportation. Delays may be particularly costly in this setting, as a flight missed only by a few minutes can result in hours worth of subsequent inconvenience.