CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"
Murdock v. Pennsylvania, 319 U.S. 105 (1943)

Syllabus

1. A municipal ordinance which, as construed and applied, requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities, is invalid under the Federal Constitution as a denial of freedom of speech, press and religion. Pp. 319 U. S. 108-110.

2. The mere fact that the religious literature is "sold", rather than "donated" does not transform the activities of the colporteur into a commercial enterprise. P. 319 U. S. 111.

3. Upon the record in these cases, it cannot be said that "Jehovah's Witnesses" were engaged in a commercial, rather than in a religious, venture. P. 319 U. S. 111.

4. A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution. P. 319 U. S. 113.

5. The flat license tax here involved restrains in advance the Constitutional liberties of press and religion, and inevitably tends to suppress their exercise. P. 319 U. S. 114.

6. That the ordinance is "nondiscriminatory," in that it applies also to peddlers of wares and merchandise, is immaterial. The liberties guaranteed by the First Amendment are in a preferred position. P. 319 U. S. 115.

7. Since the privilege in question is guaranteed by the Federal Constitution, and exists independently of state authority, the inquiry as to whether the State has given something for which it can ask a return is irrelevant. P. 319 U. S. 115.

8. A community may not suppress, or the State tax, the dissemination of views because they are unpopular, annoying, or distasteful. P. 319 U. S. 116.

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9. The assumption that the ordinance has been construed to apply only to solicitation from house to house cannot sustain it, since it is not narrowly drawn to prevent or control abuses or evil arising from that particular type of activity. P. 319 U. S. 117.

149 Pa.Super. 175, 27 A.2d 666, reversed.

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The First Amendment, which the Fourteenth makes applicable to the states, declares that

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . ."

It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. Yet the license tax imposed by this ordinance is, in substance, just that.

Petitioners spread their interpretations of the Bible and their religious beliefs largely through the hand distribution of literature by full- or part-time workers. [Footnote 4] They claim to follow the example of **Paul, teaching "publickly, and from house to house." Acts 20:20.** They take literally the mandate of the Scriptures, "Go ye into all the world, and preach the gospel to every creature." Mark 16:15. In doing so, they believe that they are obeying a commandment of God.

The hand distribution of religious tracts is an age-old form of missionary evangelism -- as old as the history of printing presses. [Footnote 5] It has been a potent force in various religious movements down through the years. [Footnote 6] This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands

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upon thousands of homes and seek through personal visitations to win adherents to their faith. [Footnote 7] 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. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

The integrity of this conduct or behavior as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be. Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. Reynolds v.

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United States, 98 U. S. 145, 98 U. S. 161-167, and Davis v. Beason, 133 U. S. 333, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve

the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types. The manner in which it is practiced at times gives rise to special problems with which the police power of the states is competent to deal. See, for example, Cox v. New Hampshire, 312 U. S. 569, and Chaplinsky v. New Hampshire, 315 U. S. 568. But that merely illustrates that the rights with which we are dealing are not absolutes. Schneider v. State, 308 U. S. 147, 308 U. S. 160-161. We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation. Nor is there involved here any question as to the validity of a registration system for colporteurs and other solicitors. The cases present a single issue -- the constitutionality of an ordinance which, as construed and applied, requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities.

The alleged justification for the exaction of this license tax is the fact that the religious literature is distributed with a solicitation of funds. Thus, it was stated in Jones v. Opelika, supra, p. 316 U. S. 597, that, when a religious sect uses "ordinary commercial methods of sales of articles to raise propaganda funds," it is proper for the state to charge "reasonable fees for the privilege of canvassing." Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction, at times, is vital. As we stated only the other day, in Jamison v. Texas, 318 U. S. 413, 318 U. S. 417,

"The states can prohibit the use of the streets for

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the distribution of purely commercial leaflets, even though such leaflets may have 'a civic appeal, or a moral platitude' appended. Valentine v. Chrestensen, 16 U. S. 52, 16 U. S. 55. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes."

But the mere fact that the religious literature is "sold" by itinerant preachers, rather than "donated," does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist, however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom

of the press, freedom of religion are available to all, not merely to those who can pay their own way. As we have said, the problem of drawing the line between a purely commercial activity and a religious one will, at times, be difficult. On this record, it plainly cannot be said that petitioners were engaged in a commercial, rather than a religious, venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find

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that petitioners "sold" the literature. The Supreme Court of Iowa, in State v. Mead, 230 Iowa 1217, 300 N.W. 523, 524, described the selling activities of members of this same sect as "merely incidental and collateral" to their "main object, which was to preach and publicize the doctrines of their order." And see State v. Meredith, 197 S.C. 351, 15 S.E.2d 678; People v. Barber, 289 N.Y. 378, 385-386, 46 N.E.2d 329. That accurately summarizes the present record.

We do not mean to say that religious groups and the press are free from all financial burdens of government. See Grosjean v. American Press Co., 297 U. S. 233, 297 U. S. 250. We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. Magnano Co. v. Hamilton, 292 U. S. 40, 292 U. S. 44-45, and cases cited. Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.

It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant

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if it does not do so. But that is to disregard the nature of this tax. It is a license tax -- a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Co., 309 U. S. 33, 309 U. S. 56-

58), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. Id., p. 309 U. S. 47, and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. Lovell v. Griffin, 303 U. S. 444; Schneider v. State, supra; Cantwell v. Connecticut, 310 U. S. 296, 310 U. S. 306; Largent v. Texas, 318 U. S. 418; Jamison v. Texas, supra. It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 U.S. pp. 316 U. S. 607-609, 316 U. S. 620, 316 U. S. 623. In that case, as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases, the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee

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imposed as a regulatory measure to defray the expense of policing the activities in question. [Footnote 8] It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion, and inevitably tends to suppress their exercise. *That is almost uniformly recognized as the inherent vice and evil of this flat license tax.* As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution." [Footnote 9] Blue Island v. Kozul, 379 Ill. 511, 519, 41 N.E.2d 515. So it may not be said that proof is lacking that these license taxes, either separately or cumulatively, have restricted or are likely to restrict petitioners' religious activities. On their face, they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.

The taxes imposed by this ordinance call hardly help but be as severe and telling in their impact on the freedom

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of the press and religion as the "taxes on knowledge" at which the First Amendment was partly aimed. Grosjean v. American Press Co., supra, pp. 297 U. S. 244-249. They may indeed operate even more subtly. Itinerant evangelists moving

throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped.

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers, and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. State Tax Commission v. Aldrich, 316 U. S. 174, and cases cited. But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is guaranteed the people by the Federal Constitution.

Considerable emphasis is placed on the kind of literature which petitioners were distributing -- its provocative,

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abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See Douglas v. Jennette, concurring opinion, post, p. 319 U. S. 166. But those considerations are no justification for the license tax which the ordinance imposes. **Plainly, a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful.** If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.

Jehovah's Witnesses are not "above the law." But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. Chaplinsky v. New Hampshire, supra. Nor do we have here, as we did in Cox v. New Hampshire, supra, and Chaplinsky v. New Hampshire, supra, state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narrowly drawn to safeguard the people of the community in their homes against the evils of solicitations. See

Cantwell v. Connecticut, supra, 310 U. S. 306. As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors. See Cox v. New Hampshire,

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supra, pp. 312 U. S. 576-577. Nor can the present ordinance survive if we assume that it has been construed to apply only to solicitation from house to house. [Footnote 10] The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city-wide in scope (Jones v. Opelika) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion. They stand or fall together.

The judgment in Jones v. Opelika has this day been vacated. Freed from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature. The judgments are reversed, and the causes are remanded to the Pennsylvania Superior Court for proceedings not inconsistent with this opinion.

Reversed.