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June 5, 2006

Mr. Larry Keffer
Biblical Research Center
P.O. Box 292576
Tampa, FL 33687

Dear Mr. Keffer:

Thank you for contacting the Christian Law Association and this law firm regarding your First Amendment rights of Free Speech in traditional public forum areas, such as public streets. By way of introduction, our law firm serves as general counsel for the Christian Law Association, a group which has been in existence for more than 30 years in order to provide correct legal information to religious groups and individuals and to government officials regarding issues of religious liberty and free speech.

As you requested, we are providing you with a Legal Opinion Memorandum regarding the law that controls the type of free speech activity in which you generally engage. Feel free to take copies of this letter to your Mayor, Chief of Police, and City Attorney as a statement of your legal position. In fact, the Rev. Billy Graham began his career as a street preacher on the city streets of Tampa, and a plaque has been erected in his honor to commemorate his historic preaching in this city.

You might also want to carry a copy of this letter with you on the street to show to any police officers who might attempt to unconstitutionally interfere with your First Amendment activities in the future. If a law enforcement official attempts to interfere with your right to freedom of speech, which includes your right to preach on public streets, we advise that you follow the instructions of the law enforcement official, but that you also obtain the name and badge number of the police officer who has violated your civil rights. **The law provides a legal remedy for an official violation of constitutional rights against citizens who are peacefully exercising those rights.**

It is important in the consideration of the problems you anticipate to particularly note several important and well-established legal principles:

1. Offense is never a reason to interfere with a citizen's constitutional rights to freedom of speech. Our U.S. Supreme Court has said numerous times that it is **the speech with which we most disagree that deserves the most protection.**
2. The "Heckler's Veto" also mandates that if another individual attempts to interfere with the free speech rights of a citizen, **the police must deal appropriately with the heckler and may not shut down the speaker.**

The following legal material is included in a "Right to Witness" book published by the Christian Law Association which clearly outlines your First Amendment right to engage in street preaching in a public forum area such as a city street or public square.

This letter has assisted many street preachers in educating their local communities about this important constitutional freedom. It has been our experience that when local communities and law enforcement officials understand what the law requires, they are happy to comply with it without the need for any further action.

LEGAL OPINION MEMORANDUM

Public streets and parks are considered to be a "traditional public forum." This is the classic place where citizens have always shared their beliefs and ideas with one another.

The "traditional public forum" is the most protected place for Christian witnessing and literature distribution. All citizens have an absolute right to share their faith in the "traditional public forum" of streets and parks. This absolute right is subject only to limited controls in the interest of public safety and order.

In 1939, the United States Supreme Court decided the case of Hague v. C.I.O., 307 U.S. 496 (1939). The Court held that citizens have a "guaranteed access" to streets, parks, and other "traditional public forum" areas for free speech activities. The Court also held that the privilege to use the streets and parks for communication of views (including religious views) may be regulated in the best interests of all, but it must not, under the guise of regulation, be abridged or denied. Mere inconvenience to the government will not outweigh free speech interests. The government must use the least restrictive means of achieving legitimate, content neutral objectives. Justice Robert said in the Court's majority opinion,

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, *Id.* at 516.

Witnessing activities, such as preaching, singing, etc. on the public streets, and Gospel tract distribution are protected First Amendment activities because courts treat them as a right of free speech, not because they are a right to the free exercise of religion. All regulation of free speech activities must be reasonable and must allow for real communication with the intended audience of the speaker.

Christians are free to witness and distribute Gospel tracts in public streets and parks. Christians are also free to preach, sing, or present dramatizations that might collect a crowd, as long as that crowd will not block pedestrian or vehicular traffic. Permits may sometimes be required for large crowd generating entertainment activities or where amplification is used.

We suggest that street preachers and those who distribute free literature adhere to the following practical guidelines:

Practical Guidelines:

1. **Do not disrupt the traffic flow.** Stand near a building or other stationary object such as a lamp post.
2. **Do not interfere with ingress or egress to buildings.**
3. **Maintain a reasonable noise level for the situation.** An appropriate noise level for a business district would logically be higher than for a residential area late in the evening.
4. **Do not use words that would provoke a riot or other "clear and present danger" to public safety.**
5. **Identify yourself to law enforcement officials if you are in a "bad" neighborhood** so that they will not think you are a drug dealer or are offering other illicit materials.
6. If hassled by police or other citizens, **be polite, explain your rights, but do not cause a confrontation or resist arrest.**
7. **Consider picking up any Gospel tracts passersby drop near you in the street.** This practice may also save you money since you may be able to reuse some of the tracts.
8. **Cooperate with a fair and reasonable permit process if you are using amplification or will generate a large crowd.**
9. **Don't force people to take your literature** if they obviously do not want it.
10. **If you engage someone in conversation about the Gospel, move to the side of the street in order not to block traffic.**
11. If you might gather a crowd by engaging in preaching, drama, or singing, **check your location ahead of time to make sure that a crowd will not block traffic flow or interfere with ingress and egress to buildings.**
12. **Work in teams as much as possible to ensure safety** and to vouch for each other if confronted by police. This is particularly important in "bad" parts of town.
13. You may want to **consult ahead of time with a local attorney or bail bondsman in case you are unjustly arrested or picked up in a general police sweep.** Memorize the telephone number or carry it with you so you can call for help if needed.
14. **If you see a companion being arrested, do not interfere with the arrest.** Observe from the sidelines and then call a local attorney or pastor for help.
15. **Do not resist if arrested yourself.** If your letter of introduction and list of court cases do not help, go along peacefully and call a local attorney from the police station. Make sure that you obtain the name and badge number of the particular law enforcement officer who has interfered with your constitutional rights to freedom of speech.
16. **Consider videotaping your free speech activities and any confrontations with police** so that you will have an objective record with which to defend yourself against any illegal arrest.

Key Free Speech Cases In Public Streets and Parks

Hague v. C.I.O., 307 U.S. 496 (1939).

The United States Supreme Court held that **citizens have a "guaranteed access" to streets, parks, and other "traditional public forum."** The privilege to use the streets and parks for communication of views may be regulated in the best interests of all, but it must not, under the guise of regulation, be abridged or denied. Mere inconvenience to (he government will not outweigh free speech interests. The government must use the least restrictive means of achieving legitimate, content neutral objectives.

Ward v. Rock Against Racism. 491 U.S. 781 (1989).

Time, place and manner regulations must be narrowly tailored and must not be substantially broader than necessary to achieve a significant government interest.

Lovell v. Griffin. 303 U.S. 444 (1938).

An ordinance may not prohibit all distribution of literature. Such an ordinance violates the First Amendment guarantee of freedom of the press by subjecting literature to licensing and censorship.

Schneider v State, 308 U.S. 147 (1939).

The United States Supreme Court did not allow cities to completely forbid leaflet distribution in order to prevent littering. **The objective of keeping the streets clean does not outweigh the right to distribute literature in public.**

Cox v. New Hampshire, 312 U.S. 569 (1941).

The United States Supreme Court **permitted a city to require a permit for parades and public rallies as a reasonable means of maintaining public order.**

Freedman v. Maryland, 380 U.S. 51 (1965).

Public officials may not be given overly broad discretion to grant or deny permits or licenses.

Cantwell v. Connecticut, 310 U.S. 296 (1940).

Speech may not be prohibited merely because it offends some listeners.

Kunz v. New York, 340 U.S. 290 (1951).

The United States Supreme Court **did not allow a permit to include any restrictions on a speaker's right of free expression.** Permits may not be used as a prior restraint on free speech activities. Inappropriate or illegal activities may only be punished after they have occurred.

Forsyth County v. The Nationalist Movement, 112 S.Ct. 2395 (1992).

Permit applicants may not be required to pay a fee to meet expenses of a city for allowing a free speech activity. A city may not consider the listeners' reaction to a speaker when drafting a content neutral ordinance. If a fee is charged it must be reasonable and uniform for all speakers.

Cox v. Louisiana. 379 U.S. 536 (1965).

Hecklers may not be allowed to veto a speaker's right of free speech. Police must control a crowd rather than arrest the speaker in order to maintain order. Regulations may be imposed on free speech to control traffic flow.

Gregory v. City of Chicago, 394 U.S. 111 (1969).

Peaceful marching, chanting, and singing is protected by the First Amendment.

Grayned v. Rockford. 408 U.S. 104 (1972).

Free speech expression may be regulated for noise content in appropriate places such as schools while classes are in session. The general test is to ask whether the expressive activity is basically incompatible with the normal activities of a particular place at a particular time.

I hope this information will be helpful to you and to your local officials as they consider their legal responsibilities in this matter. Please contact us again if you continue to have difficulty in exercising your protected First Amendment right of Free Speech.

Sincerely,

Gibbs Law Firm, P.A.

Barbara J. Weller
Admitted in Florida