

Legal Rights to Witness on the Streets

School of Biblical Evangelism, Living Waters

<http://www.biblicalevangelism.com/451>

We suggest that you carry a copy of this with you on the street in the event law enforcement personnel approach you. We have found that, normally, when city officials and police understand their obligation to protect the free speech rights of citizens, they usually allow you to continue without any interference.

Public streets and parks are considered to be "traditional public forums." This is the classic place where citizens have always been permitted to share their beliefs and ideas with one another either verbally or through the distribution of literature. In the case of *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 the government will not outweigh free speech interests.

The "traditional public forum" is the most protected place for Christian witnessing, "street preaching," and tract 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--i.e. Two parades cannot march down the same street at the same time so parade permits, if constitutionally granted, are permissible.

It is important to note that controls for public safety and order may not be imposed for reasons such as potential littering, potential offense to other citizens, or attempts to silence some citizens while continuing to permit others to speak in the forum. Amplification may be regulated by ordinances setting noise decibel levels under *Kovacs v. Cooper*, 335 U.S. 77 (1949). In the case of *Schneider v. State*, 308 U.S. 147 (1939), the United States Supreme Court did not permit cities to 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.

Christians are free to witness and distribute Gospel tracts in public streets and parks. Christians are also free to preach, sing, or present dramatizations, which might collect a crowd as long as that crowd will not block pedestrian or vehicular traffic. Permits may sometimes be required for formal crowd generating activities but they must be available on a neutral basis to all who request them and must allow real communication to take place. In the case of *Freedman v. Maryland*, 380 U.S. 51 (1965), the United States Supreme Court held that public officials may not be given overly broad discretion to grant or deny permits or licenses.

First Amendment law also does not allow city police or officials to interfere with a citizen's right of freedom of speech simply because that speech might offend a listener. These cases are particularly important to your situation. In the case of *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the United States Supreme Court held that speech may not be prohibited merely because it offends some listeners.

Several other Supreme Court cases have also dealt with this issue of giving offense to other citizens, which is sometimes called the "Heckler's Veto" and is not permitted. In the case of *Cox v. Louisiana*, 379 U.S. 536 (1965), the United States Supreme Court held that 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. A similar ruling that offensiveness is not a reason to limit free speech rights was made by the Supreme Court in the case of *Cohen v. California*, 403 U.S. 15 (1971).

In America, citizens, police and city officials are still held to the legal standard that can be restated in the folk maxim: I may not agree with what you say but I will defend to the death your right to say it. That is still the law in these United States. [\(See "Key Legal Cases" at the bottom of this page.\)](#) It is also true that I may be offended by what you say but I must protect your constitutional right to say it. Witnessing, "street preaching," and distribution of free literature are constitutionally protected activities because they are ways citizens have always exercised their rights of free speech.

Practical Guidelines for Street Preachers:

- Do not disrupt the pedestrian traffic flow.

- Do not speak within earshot of store entrances.
- Maintain a reasonable noise level for the situation.
- If hassled by police or other citizens, be polite and explain your rights calmly.
- Consider picking up any tracts passersby may drop near you in the street.
- Don't force people to take literature if they obviously do not want it.
- 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.
- You could carry a letter from a pastor or evangelist vouching for your legitimate activities.
- You might also carry along a list of names of court cases that give you the right to do what you are doing.
- 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.

IMPORTANT NOTE: This is not intended to be, and does not constitute, the giving of legal advice. In this short paper we can only summarize the rights of Christians in public places. It's important that one understand exactly how things can be effectively accomplished under the law and by understanding decisions by the U. S. Supreme Court. It is important to remember that this area of the law is constantly changing. For this reason we urge readers that before implementing anything mentioned in this paper that you obtain more information available from the [Christian Law Association \(CLA\)](#), and that you contact competent legal counsel for advice. The CLA has booklets written by Christian lawyers who have carefully studied the U. S. Supreme Court (and other court) decisions. If you follow their guidelines, you will be amazed at how much freedom there is to present the Christian message.

KEY LEGAL CASES

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 the 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.

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 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 for free speech.

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). A city may not consider the listeners' reaction to a speaker when permitting free speech activities.

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 hospitals or 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. Unamplified speech is permissible for "street preachers" on public streets.