AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Free Speech/Public Property, Subsidies, Employees, and Schools

**Organization for a Better Austin v. Keefe, 402 U.S. 415** (1971)

*Organization for a Better Austin (OBA) was a community group in the Austin neighborhood of Chicago. Jerome Keefe was a real estate broker living Westchester, a suburb of Chicago. OBA accused Keefe of engaging in “panic peddling” by encouraging white homeowners in Austin to put their houses up for sale because of the growing black population in the neighborhood. Keefe would then accept the listing and facilitate the sale of the house to blacks entering the neighborhood. OBA hoped to “stabilize” the racial demographics of the neighborhood at its current, racially integrated level. OBA organized picketing and leafletting at Keefe’s business and private residence. The leaflets gave Keefe’s home address and phone number and encouraged his neighbors in Westchester to tell Keefe to stop soliciting business in Austin and they were distributed in Keefe’s neighborhood, a nearby shopping center, and a local church. The leaflets informed Keefe’s neighbors that when Keefe agreed to stay out of Austin, “we stop coming to Westchester.”*

*In October 1967, Keefe sought an injunction in state court prohibiting OBA from picketing Keefe’s home and business and from distributing their leaflets. A trial, organizers of the OBA told the court that “we went out and decided to . . . let his neighbors know what he was doing to us.” The trial court granted the injunction for Westchester, concluding that OBA had violated Keefe’s right to privacy. The court refused to grant an injunction blocking the picketing of Keefe’s business in Austin, which the court held was constitutionally protected speech. A state appellate court affirmed that ruling, concluding that the purpose of the OBA’s activities in Westchester “was not to inform the public of a matter of public interest,” but rather to coerce Keefe into compliance. In an 8-1 decision, the U.S. Supreme Court reversed the state court, holding that the OBA’s activities in Westchester were also constitutionally protected. The dissent was on procedural grounds and did not address the substance of the dispute.*

CHIEF JUSTICE BURGER delivered the opinion of the Court.

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It is elementary, of course, that in a case of this kind the courts do not concern themselves with the truth or validity of the publication. Under *Near v. Minnesota* (1931), the injunction, so far as it impose prior restraint on speech and publication, constitutes an impermissible restraint on First Amendment rights. Here, as in that case, the injunction operates, not to redress alleged private wrongs, but to suppress, on the basis of previous publications, distribution of literature “of any kind” in a city of 18,000.

This Court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment. *Martin v. City of Struthers* (1943). In sustaining the injunction, however, the Appellate Court was apparently of the view that petitioners' purpose in distributing their literature was not to inform the public, but to "force" respondent to sign a no-solicitation agreement. The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. Petitioners were engaged openly and vigorously in making the public aware of respondent's real estate practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability.

Any prior restraint on expression comes to this Court with a "heavy presumption" against its constitutional validity. Respondent thus carries a heavy burden of showing justification for the imposition of such a restraint. He has not met that burden. No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants use of the injunctive power of a court. Designating the conduct as an invasion of privacy, the apparent basis for the injunction here, is not sufficient to support an injunction against peaceful distribution of informational literature of the nature revealed by this record. . . .

*Reversed*.

JUSTICE HARLAN, dissenting.

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