AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era—Democratic Rights/Free Speech/Public Property, Subsidies, Employees, and Schools

**Heffron v. International Society for Krishna Consciousness, 452 U.S. 640** (1981)

*The Minnesota Agricultural Society is a public corporation that operates an annual state fair on a state-owned tract of land in St. Paul, Minnesota. The rules of the state fair required that all groups selling, exhibiting or distributing material on the fairgrounds must do so from a rented booth. Booths were available on a first-come, first-served basis, and the state fair drew over 1400 exhibitors and over a million visitors.*

*The day before the start of the 1977 state fair, the International Society for Krishna Consciousness (ISKCON) sued Michael Heffron, the secretary of the Minnesota Agricultural Society, and other state fair officials in state district court. ISKCON sought a declaration that the state fair rule that groups must work out of booths was unconstitutional and an injunction against its enforcement. In particular, ISKCON argued that its religious rituals required that its adherents “greet members of the public” by giving them small gifts and circulate in public places selling religious literature and soliciting donations. The trial court upheld the rule limiting the distribution and selling of materials, so long as the Krishnas could otherwise move through the public fairgrounds and engage in normal discussions of their religious beliefs. On appeal, the Minnesota Supreme Court reversed and struck down the rule as an unconstitutional restriction on free speech. The Minnesota Agricultural Society appealed to the U.S. Supreme Court.*

*In a 5-4 decision, the Supreme Court reversed the state supreme court and upheld the state fair rule. The majority found that the booth rule was a reasonable time, place and manner regulation on speech, given the conditions of the fairgrounds. What principles guide the Court in evaluating the constitutionality of the fair’s rule? How hard should judges scrutinize the practical judgments that government officials make on what type of regulations might be necessary to advance governmental interests?*

JUSTICE WHITE delivered the opinion of the Court.

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It is common ground that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. As the Minnesota Supreme Court recognized, the activities of ISKCON, like those of others protected by the First Amendment, are subject to reasonable time, place, and manner restrictions. "We have often approved restrictions of that kind provided that they are justified without reference to the content of the regulated speech, that they serve a significant governmental interest, and that in doing so they leave open ample alternative channels for communication of the information." *Virginia Pharmacy Board v. Virginia Citizens Consumer Council* (1976). . . .

A major criterion for a valid time, place, and manner restriction is that the restriction "may not be based upon either the content or subject matter of speech." [The rule] qualifies in this respect, since . . . [it] applies evenhandedly to all who wish to distribute and sell written materials or to solicit funds. No person or organization, whether commercial or charitable, is permitted to engage in such activities except from a booth rented for such purposes.

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A valid time, place, and manner regulation must also “serve a significant governmental interest.” Here, the principle justification asserted by the State . . . is the need to maintain the orderly movement of the crowd given the large number of exhibitors and persons attending the Fair.

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As a general matter, it is clear that a State's interest in protecting the "safety and convenience" of persons using a public forum is a valid governmental objective. Furthermore, consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved. . . . [I]t is clear that there are significant differences between a street and the fairgrounds. A street is continually open, often uncongested, and constitutes not only a necessary conduit in the daily affairs of a locality's citizens, but also a place where people may enjoy the open air or the company of friends and neighbors in a relaxed environment. The Minnesota Fair, as described above, is a temporary event attracting great numbers of visitors who come to the event for a short period to see and experience the host of exhibits and attractions at the Fair. The flow of the crowd and demands of safety are more pressing in the context of the Fair. As such, any comparisons to public streets are necessarily inexact.

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. . . . The justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKCON. That organization and its ritual of Sankirtan have no special claim to First Amendment protection as compared to that of other religions who also distribute literature and solicit funds. . . .

If [the rule] is an invalid restriction on the activities of ISKCON, it is no more valid with respect to the other social, political, or charitable organizations that have rented booths at the Fair and confined their distribution, sale, and fund solicitation to those locations. Nor would it be valid with respect to other organizations that did not rent booths, either because they were unavailable due to a lack of space or because they chose to avoid the expense involved, but that would in all probability appear in the fairgrounds to distribute, sell, and solicit if they could freely do so. The question would also inevitably arise as to what extent the First Amendment also gives commercial organizations a right to move among the crowd to distribute information about or to sell their wares as respondents claim they may do.

. . . . By focusing on the incidental effect of providing an exemption from [the rule] to ISKCON, the Minnesota Supreme Court did not take into account the fact that any such exemption cannot be meaningfully limited to ISKCON, and as applied to similarly situated groups would prevent the State from furthering its important concern with managing the flow of the crowd. In our view, the Society may apply its Rule and confine the type of transactions at issue to designated locations without violating the First Amendment.

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*Reversed*.

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE STEVENS join, concurring in part and dissenting in part.

. . . . [T]he Court fails to recognize that some of the State's restrictions may be reasonable while others may not.

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I quite agree with the Court that the State has a significant interest in maintaining crowd control on its fairgrounds. I also have no doubt that the State has a significant interest in protecting its fairgoers from fraudulent or deceptive solicitation practices. Indeed, because I believe on this record that this latter interest is substantially furthered by a Rule that restricts sales and solicitation activities to fixed booth locations, where the State will have the greatest opportunity to police and prevent possible deceptive practices, I would hold that [the rule’s] restriction on those particular forms of First Amendment expression is justified as an antifraud measure. Accordingly, I join the judgment of the Court insofar as it upholds the restriction on sales and solicitations. However, because I believe that the booth Rule is an overly intrusive means of achieving the State's interest in crowd control, and because I cannot accept the validity of the State's third asserted justification, I dissent from the Court's approval of the restriction on the distribution of literature.

. . . . If fairgoers can make speeches, engage in face-to-face proselytizing, and buttonhole prospective supporters, they can surely distribute literature to members of their audience without significantly adding to the State's asserted crowd control problem. The record is devoid of any evidence that the 125-acre fairgrounds could not accommodate peripatetic distributors of literature just as easily as it now accommodates peripatetic speechmakers and proselytizers.

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JUSTICE BLACKMUN, concurring in part and dissenting in part.

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