AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era – Democratic Rights/Free Speech

**Lovell v. City of Griffin, 303 U.S. 444** (1938)

*The city of Griffin, Georgia, had an ordinance that barred the distribution of handbills or literature of any kind within the city limits without prior written permission of the city manager. Alma Lovell, a Jehovah’s Witness, was distributing religious tracts within the city. She refused to seek permission of the city manager to do so since she viewed herself as on a mission from God. She was arrested, convicted of violating the ordinance, and sentenced to fifty days in jail in lieu of payment of the $50 fine. She appealed through the state courts, arguing that the ordinance violated the requirements of the First Amendment and infringed on her free exercise of religion and freedom of speech, but the state courts upheld the verdict. The U.S. Supreme Court unanimously reversed the state courts, holding that the freedom of speech included the right to distribute publications without a license from the government.*

CHIEF JUSTICE HUGHES delivered the opinion of the Court.

. . . .

Freedom of speech and freedom of the press, which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by state action. *Gitlow v. New York* (1925). It is also well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment.

The ordinance in its broad sweep prohibits the distribution of "circulars, handbooks, advertising, or literature of any kind." It manifestly applies to pamphlets, magazines and periodicals. . . . The ordinance is not limited to "literature" that is obscene or offensive to public morals or that advocates unlawful conduct. There is no suggestion that the pamphlet and magazine distributed in the instant case were of that character. The ordinance embraces "literature" in the widest sense.

The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation "either by hand or otherwise." There is thus no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager.

We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his "Appeal for the Liberty of Unlicensed Printing." And the liberty of the press became initially a right to publish "*without* a license what formerly could be published only *with* one." While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. *Patterson v. Colorado* (1907). Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form.

The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty, as the pamphlets of Thomas Paine and others in our own history abundantly attest. The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. . . .

The ordinance cannot be saved because it relates to distribution and not to publication. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value." . . .

. . . .

*Reversed*.

JUSTICE CARDOZO took no part in consideration and decision of this case.