AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

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

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Saia v. New York, 334 U.S. 558 (1948)

Samuel Saia joined the Jehovah's Witnesses and, like many other members of his church, took up the obligation of spreading his faith. In 1935, he attached sound equipment to the roof of his car and began driving along city streets in upstate New York playing a record of a sermon. In 1945, the City of Lockport, New York, adopted an ordinance prohibiting the use of sound amplification equipment in a public place, except in cases of "news and matters of public concern and athletic activities" and those with the approval of the chief of police. The anti-noise ordinance was part of a general updating of the city's laws and responded to a variety of noise complaints. The Jehovah Witnesses received permits to hold public meetings in the city park, where they used Saia's sound system to broadcast their sermons, but following complaints the chief of police refused to issue more permits. When Saia again set up his sound system at the park without a permit, he was arrested and charged with violating the anti-noise ordinance. The state courts affirmed his conviction, and he appealed to the U.S. Supreme Court. In a 5–4 decision, the Court struck down the permitting requirement of the anti-noise ordinance as an unconstitutional prior restraint on free speech.

JUSTICE DOUGLAS delivered the opinion of the Court,

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We hold that § 3 of this ordinance is unconstitutional on its face, for it establishes a previous restraint on the right of free speech in violation of the First Amendment which is protected by the Fourteenth Amendment against State action. To use a loud-speaker or amplifier one has to get a permit from the Chief of Police. There are no standards prescribed for the exercise of his discretion. The statute is not narrowly drawn to regulate the hours or places of use of loud-speakers, or the volume of sound (the decibels) to which they must be adjusted. The ordinance therefore has all the vices of the ones which we struck down in *Cantwell v. Connecticut* (1940), *Lovell v. Griffin* (1938), and *Hague v. C.I.O.* (1939).

In the *Cantwell* case a license had to be obtained in order to distribute religious literature. What was religious was left to the discretion of a public official. We held that judicial review to rectify abuses in the licensing system did not save the ordinance from condemnation on the grounds of previous restraint.

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The present ordinance has the same defects. The right to be heard is placed in the uncontrolled discretion of the Chief of Police. He stands athwart the channels of communication as an obstruction which can be removed only after criminal trial and conviction and lengthy appeal. A more effective previous restraint is difficult to imagine. Unless we are to retreat from the firm positions we have taken in the past, we must give freedom of speech in this case the same preferred treatment that we gave freedom of religion in the *Cantwell* case. . . .

Loud-speakers are today indispensable instruments of effective public speech. The sound truck has become an accepted method of political campaigning. It is the way people are reached. Must a candidate for governor or the Congress depend on the whim or caprice of the Chief of Police in order to

use his sound truck for campaigning? Must he prove to the satisfaction of that official that his noise will not be annoying to people?

The present ordinance would be a dangerous weapon if it were allowed to get a hold on our public life. Noise can be regulated by regulating decibels. The hours and place of public discussion can be controlled. But to allow the police to bar the use of loud-speakers because their use can be abused is like barring radio receivers because they too make a noise. The police need not be given the power to deny a man the use of his radio in order to protect a neighbor against sleepless nights. The same is true here.

Any abuses which loud-speakers create can be controlled by narrowly drawn statutes. When a city allows an official to ban them in his uncontrolled discretion, it sanctions a device for suppression of free communication of ideas. In this case a permit is denied because some persons were said to have found the sound annoying. In the next one a permit may be denied because some people find the ideas annoying. Annoyance at ideas can be cloaked in annoyance at sound. The power of censorship inherent in this type of ordinance reveals its vice.

Courts must balance the various community interests in passing on the constitutionality of local regulations of the character involved here. But in that process they should be mindful to keep the freedoms of the First Amendment in a preferred position. . . .

Reversed.

JUSTICE FRANKFURTER, with whom JUSTICE REED and JUSTICE BURTON join, dissenting.

The appellant's loud-speakers blared forth in a small park in a small city. . . . The attention of a large fraction of the area of the park was thus commanded.

The native power of human speech can interfere little with the self-protection of those who do not wish to listen. They may easily move beyond earshot, just as those who do not choose to read need not have their attention bludgeoned by undesired reading matter. And so utterances by speech or pen can neither be forbidden nor licensed, save in the familiar classes of exceptional situations. But modern devices for amplifying the range and volume of the voice, or its recording, afford easy, too easy, opportunities for aural aggression. If uncontrolled, the result is intrusion into cherished privacy. The refreshment of mere silence, or meditation, or quiet conversation, may be disturbed or precluded by noise beyond one's personal control.

Municipalities have conscientiously sought to deal with the new problems to which sound equipment has given rise and have devised various methods of control to make city life endurable. . . . Surely there is not a constitutional right to force unwilling people to listen. And so I cannot agree that we must deny the right of a State to control these broadcasting devices so as to safeguard the rights of others not to be assailed by intrusive noise but to be free to put their freedom of mind and attention to uses of their own choice.

Coming to the facts of the immediate situation, I cannot say that it was beyond constitutional limits to refuse a license to the appellant for the time and place requested. The State was entitled to authorize the local authorities of Lockport to determine that the well-being of those of its inhabitants who sought quiet and other pleasures that a park affords, outweighed the appellant's right to force his message upon them. Nor did it exceed the bounds of reason for the chief of police to base his decision refusing a license upon the fact that the manner in which the license had been used in the past was destructive of the enjoyment of the park by those for whom it was maintained. That people complained about an annoyance would seem to be a pretty solid basis in experience for not sanctioning its continuance.

Very different considerations come into play when the free exercise of religion is subjected to a licensing system whereby a minor official determines whether a cause is religious. This was the problem presented by *Cantwell*, and of course we held that "Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in

the liberty which is within the protection of the Fourteenth." To determine whether a cause is, or is not, "religious" opens up too wide a field of personal judgment to be left to the mere discretion of an official. . . . The matter before us is of quite a different order. It is not unconstitutional for a State to vest in a public official the determination of what is in effect a nuisance merely because such authority may be outrageously misused by trying to stifle the expression of some undesired opinion under the meretricious cloak of a nuisance. Judicial remedies are available for such abuse of authority, and courts, including this Court, exist to enforce such remedies.

Even the power to limit the abuse of sound equipment may not be exercised with a partiality unrelated to the nuisance. But there is here no showing of either arbitrary action or discrimination. There is no basis for finding that noisemakers similar to appellant would have obtained a license for the time and place requested. Reference is found in the testimony to the use of loud-speakers for Lutheran services in a nearby ballfield. But the ballfield was outside the park in which appellant blared to his audience, and there is nothing in the record to show that the Lutherans could have used their amplifying equipment within the park, or that the appellant would have been denied permission to use such equipment in the ballfield. . . .

The men whose labors brought forth the Constitution of the United States had the street outside Independence Hall covered with earth so that their deliberations might not be disturbed by passing traffic. Our democracy presupposes the deliberative process as a condition of thought and of responsible choice by the electorate. To the Founding Fathers it would hardly seem a proof of progress in the development of our democracy that the blare of sound trucks must be treated as a necessary medium in the deliberative process. In any event, it would startle them to learn that the manner and extent of the control of the blare of the sound trucks by the States of the Union, when such control is not arbitrarily and discriminatorily exercised, must satisfy what this Court thinks is the desirable scope and manner of exercising such control.

We are dealing with new technological devices and with attempts to control them in order to gain their benefits while maintaining the precious freedom of privacy. These attempts, being experimental, are bound to be tentative, and the views I have expressed are directed towards the circumstances of the immediate case. Suffice it to say that the limitations by New York upon the exercise of appellant's rights of utterance did not in my view exceed the accommodation between the conflicting interests which the State was here entitled to make in view of time and place and circumstances. *Cox v. New Hampshire* (1941).

JUSTICE JACKSON, dissenting.

I dissent from this decision, which seems to me neither judicious nor sound and to endanger the great right of free speech by making it ridiculous and obnoxious, more than the ordinance in question menaces free speech by regulating use of loud-speakers. . . .

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The appellant, one of Jehovah's Witnesses, contends, and the Court holds, that without the permission required by city ordinance he may set up a sound truck so as to flood this area with amplified lectures on religious subjects. It must be remembered that he demands even more than the right to speak and hold a meeting in this area which is reserved for other and quite inconsistent purposes. He located his car, on which loud-speakers were mounted, either in the park itself, not open to vehicles, or in the street close by. The microphone for the speaker was located some little distance from the car and in the park, and electric wires were strung, in one or more instances apparently across the sidewalk, from the one to the other. So that what the Court is holding, is that the Constitution of the United States forbids a city to require a permit for a private person to erect, in its streets, parks and public places, a temporary public address system, which certainly has potentialities of annoyance and even injury to park patrons if

carelessly handled. It was for setting up this system of microphone, wires and sound truck without a permit, that this appellant was convicted—it was not for speaking.

It is astonishing news to me if the Constitution prohibits a municipality from policing, controlling or forbidding erection of such equipment by a private party in a public park. Certainly precautions against annoyance or injury from operation of such devices are not only appropriate, but I should think a duty of the city in supervising such public premises. And a very appropriate means to supervision is a permit which will inform the city's police officers of the time and place when such apparatus is to be installed in the park. I think it is a startling perversion of the Constitution to say that it wrests away from the states and their subdivisions all control of the public property so that they cannot regulate or prohibit the irresponsible introduction of contrivances of this sort into public places.

The Court, however, ignores the aspects of the matter that grow out of setting up the system of amplifying appliances, wires and microphones on public property, which distinguish it from the cases cited as authority. It treats the issue only as one of free speech. To my mind this is not a free speech issue. Lockport has in no way denied or restricted the free use, even in its park, of all of the facilities for speech with which nature has endowed the appellant. It has not even interfered with his inviting an assemblage in a park space not set aside for that purpose. But can it be that society has no control of apparatus which, when put to unregulated proselyting, propaganda and commercial uses, can render life unbearable? It is intimated that the City can control the decibels; if so, why may it not prescribe zero decibels as appropriate to some places? It seems to me that society has the right to control, as to place, time and volume, the use of loud-speaking devices for any purpose, provided its regulations are not unduly arbitrary, capricious or discriminatory.

. . . There is no indication that these facilities would not be granted to Jehovah's Witnesses on the same terms as to the Lutherans. It is evident, however, that Jehovah's Witnesses did not want an enclosed spot to which those who wanted to hear their message could resort. Appellant wanted to thrust their message upon people who were in the park for recreation, a type of conduct which invades other persons' privacy and, if it has no other control, may lead to riots and disorder.

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But it is said the state or municipality may not delegate such authority to a Chief of Police. I am unable to see why a state or city may not judge for itself whether a Police Chief is the appropriate authority to control permits for setting up sound-amplifying apparatus. It also is suggested that the city fathers have not given sufficient guidance to his discretion. But I did not suppose our function was that of a council of revision. The issue before us is whether what has been done has deprived this appellant of a constitutional right. It is the law as applied that we review, not the abstract, academic questions which it might raise in some more doubtful case.

I disagree entirely with the idea that "Courts must balance the various community interests in passing on the constitutionality of local regulations of the character involved here." It is for the local communities to balance their own interests—that is politics—and what courts should keep out of. Our only function is to apply constitutional limitations.

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