AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 10: The Reagan Era – Democratic Rights/Free Speech

**United States v. Grace, 461 U.S. 171** (1983)

*In 1980, Mary Grace stood on the sidewalk in front the U.S. Supreme Court building and displayed a sign with the text of the First Amendment. A Supreme Court police officer informed her that it was illegal to display the sign in that area and she would have to move across the street, and she did. Shortly afterwards, she filed suit in federal district court seeking to have declared unconstitutional the federal statute that barred the display of any flag or sign designed to attract attention in the Supreme Court building or on its grounds. The trial court dismissed the case on procedural grounds, but a federal circuit court took the case and struck down the statute. The Court unanimously held that the public sidewalks around the Supreme Court building were a traditional public forum and that only reasonable time, place and manner regulations could be enforced there, not a total ban on free expression.*

JUSTICE WHITE delivered the opinion of the Court.

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The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech . . . .” There is no doubt that as a general matter peaceful picketing and leafletting are expressive activities involving "speech" protected by the First Amendment.

It is also true that "public places" historically associated with the free exercise of expressive activities, such as streets, sidewalks, and parks, are considered, without more, to be "public forums." In such places, the government's ability to permissibly restrict expressive conduct is very limited: the government may enforce reasonable time, place, and manner regulations as long as the restrictions "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." Additional restrictions such as an absolute prohibition on a particular type of expression will be upheld only if narrowly drawn to accomplish a compelling governmental interest. *Perry Education Association v. Perry Local Educators’ Association* (1983).

. . . . We have regularly rejected the assertion that people who wish "to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please." . . . There is little doubt that in some circumstances the government may ban the entry on to public property that is not a "public forum" of all persons except those who have legitimate business on the premises. The government, "no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." *Adderley v. Florida* (1966).

It is argued that the Supreme Court building and grounds fit neatly within the description of nonpublic forum property. Although the property is publicly owned, it has not been traditionally held open for the use of the public for expressive activities. . . .

. . . . The sidewalks comprising the outer boundaries of the Court grounds are indistinguishable from any other sidewalks in Washington, D. C., and we can discern no reason why they should be treated any differently. Sidewalks, of course, are among those areas of public property that traditionally have been held open to the public for expressive activities and are clearly within those areas of public property that may be considered, generally without further inquiry, to be public forum property. . . . Traditional public forum property occupies a special position in terms of First Amendment protection and will not lose its historically recognized character for the reason that it abuts government property that has been dedicated to a use other than as a forum for public expression. . . .

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We do not denigrate the necessity to protect persons and property or to maintain proper order and decorum within the Supreme Court grounds, but we do question whether a total ban on carrying a flag, banner, or device on the public sidewalks substantially serves these purposes. There is no suggestion, for example, that appellees' activities in any way obstructed the sidewalks or access to the building, threatened injury to any person or property, or in any way interfered with the orderly administration of the building or other parts of the grounds. . . .

The United States offers another justification for § 13k that deserves our attention. It is said that the federal courts represent an independent branch of the Government and that their decisionmaking processes are different from those of the other branches. Court decisions are made on the record before them and in accordance with the applicable law. The views of the parties and of others are to be presented by briefs and oral argument. Courts are not subject to lobbying, judges do not entertain visitors in their chambers for the purpose of urging that cases be resolved one way or another, and they do not and should not respond to parades, picketing, or pressure groups. Neither, the Government urges, should it *appear* to the public that the Supreme Court is subject to outside influence or that picketing or marching, singly or in groups, is an acceptable or proper way of appealing to or influencing the Supreme Court. . . .

As was the case with the maintenance of law and order on the Court grounds, we do not discount the importance of this proffered purpose for § 13k. But, again, we are unconvinced that the prohibitions of § 13k that are at issue here sufficiently serve that purpose to sustain its validity insofar as the public sidewalks on the perimeter of the grounds are concerned. Those sidewalks are used by the public like other public sidewalks. There is nothing to indicate to the public that these sidewalks are part of the Supreme Court grounds or are in any way different from other public sidewalks in the city. We seriously doubt that the public would draw a different inference from a lone picketer carrying a sign on the sidewalks around the building than it would from a similar picket on the sidewalks across the street.

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*Affirmed*.

JUSTICE MARSHALL, concurring in part.

I would hold 40 U. S. C. § 13k unconstitutional on its face. The statute in no way distinguishes the sidewalks from the rest of the premises, and excising the sidewalks from its purview does not bring it into conformity with the First Amendment. Visitors to this Court do not lose their First Amendment rights at the edge of the sidewalks any more than "students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Since the continuing existence of the statute will inevitably have a chilling effect on freedom of expression, there is no virtue in deciding its constitutionality on a piecemeal basis.

When a citizen is "in a place where [he] has every right to be," *Brown v. Louisiana* (1966), he cannot be denied the opportunity to express his views simply because the Government has not chosen to designate the area as a forum for public discussion. While the right to conduct expressive activities in such areas as streets, parks, and sidewalks is reinforced by their traditional use for purposes of assembly, that right ultimately rests on the principle that "one who is rightfully on a street which the state has left open to the public carries with him there *as elsewhere* the constitutional right to express his views in an orderly fashion." . . .

I see no reason why the premises of this Court should be exempt from this basic principle. It would be ironic indeed if an exception to the Constitution were to be recognized for the very institution that has the chief responsibility for protecting constitutional rights. I would apply to the premises of this Court the same principle that this Court has applied to other public places.

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. . . . The application of the statute does not depend upon whether the flag, banner, or device in any way concerns a case before this Court. So sweeping a prohibition is scarcely necessary to protect the operations of this Court, and in my view cannot constitutionally be applied either to the Court grounds or to the areas inside the Court building that are open to the public.

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JUSTICE STEVENS, concurring in part.

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. . . . As a matter of statutory interpretation, we should not infer that Congress intended to abridge free expression in circumstances not plainly covered by the language of the statute. As a matter of judicial restraint, we should avoid the unnecessary adjudication of constitutional questions.

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