Public Evangelism

What You Need to Know About Legal Rights for Public Evangelism

PACIFIC JUSTICE INSTITUTE

Each year, Pacific Justice Institute receives **many inquiries** about free speech rights, often in the context of open-air preaching, tract distribution, evangelism at malls, evangelism in and around schools, sidewalk counseling at abortion clinics, and many similar venues.

We have **successfully defended** a number of students who were disciplined for sharing their faith, preachers who were arrested, and others who were initially silenced. While there are **hundreds of court cases** and examples that would be relevant for a complete discussion of all these issues, we've prepared this brief summary, in the form of common questions and answers, to share some of what we've learned in more than 25 years of defending public evangelism and provide a starting point for understanding your evangelistic rights.

PREACH IT!

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In this resource, we will tackle the following questions:

Where are my rights of public evangelism the greatest?

Do I have fewer speech rights outside government buildings?

Are all sidewalks treated the same for First Amendment purposes?

How are my rights different if I am distributing literature?

Can a city ban all sound amplification, such as a bullhorn?

When can a city or local government require that I get a permit to use a public forum?

Can a city deny me access to a public park when a large event like a festival is taking place?

Do I have the right to evangelize outside public schools?

If I am a student, can I evangelize my fellow students during non-instructional time?

Are my rights of speech and evangelism any different outside abortion clinics?

Can the government limit the size or types of signs I may carry?

Can my public speech be silenced if someone considers it “hate speech”?

What about carrying signs along a highway or displaying them from an overpass?

What are my rights to evangelize in shopping malls?

Can a city prohibit door-to-door evangelism?

What should I do if I am confronted by police or security guards when I am evangelizing?

What should I do if I am arrested for preaching or public evangelism?

Q: Where are my rights of public evangelism the greatest?

A: Public forums. In a landmark 1939 case called Hague v. Congress of Industrial Organizations (C.I.O.),**1** the Supreme Court explained that speech rights are at their zenith in what have become known as public forums. The C.I.O., a labor union, had been cited by police for holding a "public assembly" without a permit. The ordinance required any public assembly within the city to be approved by the Director of Safety, who could at any time refuse a permit if he believed there would be potential riots or disturbances. The Court voided the ordinance and held that the city's restrictions went too far. The Supreme Court's identification of parks, streets and sidewalks as the "quintessential" forums for public events, demonstrations and discussions has led to the strongest protections of speech in such venues. These are by no means the only places where free speech rights may be exercised—the Court has elsewhere identified other forums such as designated public forums and limited forums. But traditional public forums are where your rights are the strongest.

(1) 307 U.S. 496 (1939).

Q: Do I have fewer speech rights outside government buildings?

A: Actually, your speech rights can be very strong outside public buildings, particularly on the public sidewalks adjacent to those buildings. One important case involved protests outside the Supreme Court itself. In United States v. Grace,**2** the Supreme Court held that prohibiting free speech on the public sidewalk outside of their own building is a violation of the First Amendment. One of the plaintiffs had been threatened with arrest for handing out pamphlets including a letter complaining about unfit judges. Another demonstrator had held a sign on the sidewalk outside the Court with the text of the First Amendment. She had been ordered to move or face arrest. The Justices ruled that, although the Supreme Court building itself is a nonpublic forum, extending restrictions out to include the public sidewalk went too far.

(2) 461 U.S. 171 (1983).

Q: Are all sidewalks treated the same for First Amendment purposes?

A: No. The Supreme Court has drawn distinctions between at least two different types of sidewalks. Following the Grace case discussed above, United States v. Kokinda**3** cautioned that the same speech rights do not apply where a sidewalk does not run along the street but leads from the street to a building. In Kokinda, the sidewalk was on the property of a post office. The reasoning is that the latter types of sidewalks serve a different, more limited purpose of facilitating ingress and egress from the building. Your rights are greater where the sidewalk is virtually indistinguishable from all the other pedestrian pathways nearby. Something else to remember is that, if an area is cramped (like a narrow sidewalk), law enforcement may have more of a basis to prevent you from holding up pedestrian traffic or blocking driveways, entrances or exits to a building. Make sure you are leaving plenty of space for people to get around you & keep going if they do not want to engage in discussion or accept literature you hand out.

(3) 497 U.S. 720 (1990).

Q: How are my rights different if I am distributing literature?

A: Your rights to distribute literature in public are strong. In Murdock v. Pennsylvania,**4** the Supreme Court struck down a local licensing and tax ordinance for door-to-door solicitation. Robert Murdock, a Jehovah's Witness, had been arrested for going door-to-door to distribute religious material. The Supreme Court observed, "The hand distribution of religious tracts is an age-old form of missionary evangelism, as old as the history of printing presses . . . This form of evangelism is utilized today on a large scale . . . It is more than preaching. It is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting." Many other cases also attest to the importance of protecting literature distribution as a form of free speech. As noted above, you just want to make sure passersby feel free to decline literature and you leave plenty of room for pedestrian traffic.

(4) 319 U.S. 105 (1943).

Q: Can a city ban all sound amplification, such as a bullhorn?

A: No. Just over 70 years ago, the Supreme Court decided Saia v. New York.[5] There, a city ordinance banned the use of sound amplification except with the permission of the police chief. Saia, who was a Jehovah's Witness, had initially obtained permission from the chief for use of amplification atop his vehicle to communicate his religious message on Sundays in a public park, but the chief refused to grant permission the next time Saia requested it, citing complaints. When Saia continued his speech activities after permission had expired, he was fined and jailed. The Supreme Court held that this sweeping, standardless restriction of amplification violated the First Amendment. The Court observed that loudspeakers had become an indispensable form of public communication, and officials can regulate with objective criteria like decibel levels and the time and place of amplification, rather than relying on a broad-based ban subject to the sole discretion of the police.

On the other end of the spectrum, one of the classic examples of a city's ability to control noise levels came in the context of rock concerts. In Ward v. Rock Against Racism,[6] the Supreme Court approved New York City's insistence that its own sound technicians control the volume of permitted concerts in Central Park. Some common sense comes into play here—the government has stronger interests in shielding residents from a high-volume concert that rattles the windows of neighboring apartment buildings and can be heard far beyond its immediate audience, than it does to shut down the speech of a lone preacher with a bullhorn or portable sound system straining to be heard above the ambient noise levels.

(5) 334 U.S. 558 (1948).

(6) 491 U.S. 781 (1989).

Q: When can a city or local government require that I get a permit to use a public forum?

A: The larger your event, the more likely it is that you will be required to obtain a permit. For instance, permit requirements for groups of 50 or more were upheld in Thomas v. Chicago Park District.[7] There, the Supreme Court unanimously upheld 13 specified grounds for denial of a permit since they were deemed unrelated to the content of specific expression. In this case, a pro-marijuana group was therefore out of luck when its permit application was denied. Permit requirements for smaller groups or individuals are scrutinized more closely. The Ninth Circuit Court of Appeals struck down permit requirements for street performers in Berger v. City of Seattle.[8] Of particular interest here, the Ninth Circuit held that permit requirements for single individuals, particularly in a public forum, are almost never valid. It's less clear at what point the permit requirement would be vulnerable, but the Ninth Circuit observed that cases from other parts of the country have also struck down permit requirements for groups of 2 or 3, and in some cases groups of 10. The takeaway is that, if you're an individual or a small group expressing yourself, particularly in a park, along a sidewalk, or in a designated public forum, a city's claim that you must have a permit to speak is highly suspect. One difference with streets is that, even though deemed a public forum, you would almost certainly need a parade permit (& stoppage of traffic) before strolling down the middle of the thoroughfare with a sign, bullhorn or tracts.

(7) 534 U.S. 316 (2002).

(8) 569 F.3d 1029 (9th Cir. 2009) (en banc).

Q: Can a city deny me access to a public park when a large event like a festival is taking place?

A: Probably not. The Ninth Circuit Court of Appeals ruled on this issue in a case called Gathright v. City of Portland,**9** in which a preacher filed suit in 2003 against the City for ejecting him from a public park for his "unreasonable" interference at public events. On six occasions Portland police forced Gathright to leave public venues for contradicting the messages of the event organizers. He was arrested after preaching during a Dalai Lama event and during an pro-LGBT event. The District Court and the Ninth Circuit sided with Gathright and laid out the differences between participating in an event and merely being present at the same location. The Ninth Circuit struck down Portland's vague ordinance used against the street preacher to enforce silence. The court drew a distinction with the Supreme Court's 1995 decision in Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston.**10** There, the Supreme Court ruled that private parade organizers could not be required to include a particular message in there parade. However, the Ninth Circuit held that counter-messages must be tolerated where it is clear they are not associated with the event organizers.

(9) 439 F.3d 573 (2006). **(10)** 515 U.S. 557 (1995).

Q: Do I have the right to evangelize outside public schools?

A: Yes, with some limitations. In a case called Grayned v. City of Rockford,[11] the Supreme Court upheld an anti-noise ordinance against demonstrators outside a school, with some important limitations. The Court emphasized that the ordinance targeted demonstrations that took place while school was in session, and that willfully disrupted classwork. In that case, the petitioner was one of dozens of demonstrators arrested for protesting outside a high school in Illinois. In all, an estimated 200 people joined the demonstration. Perhaps not surprisingly, there was evidence that the students in their classes were distracted, and this concerned the Court. Much more recently, PJI has had success defending several evangelists outside of schools who have been careful to preach or hand out literature after the school day ends and students are leaving campus. Some police and school authorities believe they can punish such speech, often because they do not like the message, but this is not at all what the Supreme Court has held.

(11) 408 U.S. 104 (1972).

Q: If I am a student, can I evangelize my fellow students during non-instructional time?

A: In many cases, yes. PJI has successfully represented a number of students who were either suspended or threatened with disciplinary action for sharing their faith. In our case Leal v. Everett Public Schools[12] a senior high school student in Everett, Washington, was repeatedly disciplined, faced expulsion, and reported to the police by school administrators for preaching at lunchtime and after-school events, and for sharing tracts with peers during the school day. Beginning in late 2014, PJI filed suit in federal court to ensure Leal was not expelled. The court ultimately agreed that aspects of the school district's policy were invalid. One of the restrictions that the court agreed could not be enforced was an odd requirement that students only be allowed to distribute literature they had written themselves. The district later had to pay PJI's attorneys' fees for trying to punish Leal.

In another case filed in Northern California, K.C. v. Medd,[13] PJI successfully represented a young student who had been called into the principal's office after giving a fellow student an invitation to a church-promoted apologetics event. The invitation was offered outside class time. The school eventually acknowledged that they could not prohibit this type of leafleting, and the case was settled favorably for our client.

(12) 2:14-cv-01762 TSZ (W.D. Wash. 2015). **(13)** 2:14-cv-02614 (E.D. Cal. 2014).

Q: Are my rights of speech and evangelism any different outside abortion clinics?

A: Somewhat. Congress enacted a federal law known as the Freedom of Access to Clinic Entrances Act (FACE).[14] Some states like California also have their own version of this law.[15] The Supreme Court has upheld narrower versions of such restrictions but struck down efforts to extend so-called "bubble zones" too far. For instance, the Supreme Court upheld a limited 8-foot bubble zone near abortion clinics in Hill v. Colorado[16] but struck down a broader, 35-foot zone in McCullen v. Coakley.[17] On the West Coast, in Hoye v. City of Oakland,[18] the Ninth Circuit struck down a bubble zone ordinance that permitted only pro-abortion speech while punishing pro-life speech outside clinics. This type of double standard has rightfully been rejected by even liberal courts.

(14) 18 U.S.C. § 248.
(15) California Penal Code §423-423.6.
(16) 530 U.S. 703 (2000).
(17) 134 S. Ct. 2518 (2014).
(18) 653 F.3d 835 (2011).

Q: Can the government limit the size or types of signs I may carry?

A: In many cases, yes. Restrictions based on the content of a sign are highly suspect under decisions such as Reed v. Town of Gilbert.**19** But the size of signs may be regulated depending on the venue, such as a sidewalk. And certain locations (such as the grounds of the California State Capitol where many protests take place**20**) prohibit signs on sticks that could be used as weapons. These types of size limitations are deemed content-neutral and are reviewed less stringently by the courts than restrictions that deal with content. In Reed, a pastor renting space at an elementary school in Gilbert, Arizona, ran into a maze of city ordinances restricting the church's ability to let people know of their location. The Supreme Court's decision in the pastor's favor sharply restricts the government's ability to favor some types of messages on signs over other messages.

(19) 135 S.Ct. 2218 (2015). **(20)** 13 C.C.R. Section 1862(a).

Q: Can my public speech be silenced if someone considers it "hate speech" or offensive?

A: No. One of the first Supreme Court cases to apply First Amendment rights to state and local laws was Cantwell v. Connecticut.**21** Newton Cantwell, a Jehovah's Witness, went door-to-door to witness in a Catholic neighborhood when police arrested him for disturbing the peace with his anti-Catholic message and violating Connecticut statute that required certification of solicitors. The Supreme Court unanimously ruled in Cantwell's favor. Although it is necessary to regulate solicitation and maintain order, allowing state officials to selectively decide how and when to apply statutes to a situation involving religion is suppressive. The Court protected Cantwell's speech, despite its offensive nature to the Catholic community.

Today, most Americans are repulsed by the antics of the notorious Westboro Baptist Church, which has protested at hundreds of venues and events including military funerals, with signs such as "Thank God for dead soldiers." Yet the Supreme Court held that even their speech was protected, "notwithstanding the distasteful and repugnant nature of the words," in Snyder v. Phelps.**22**

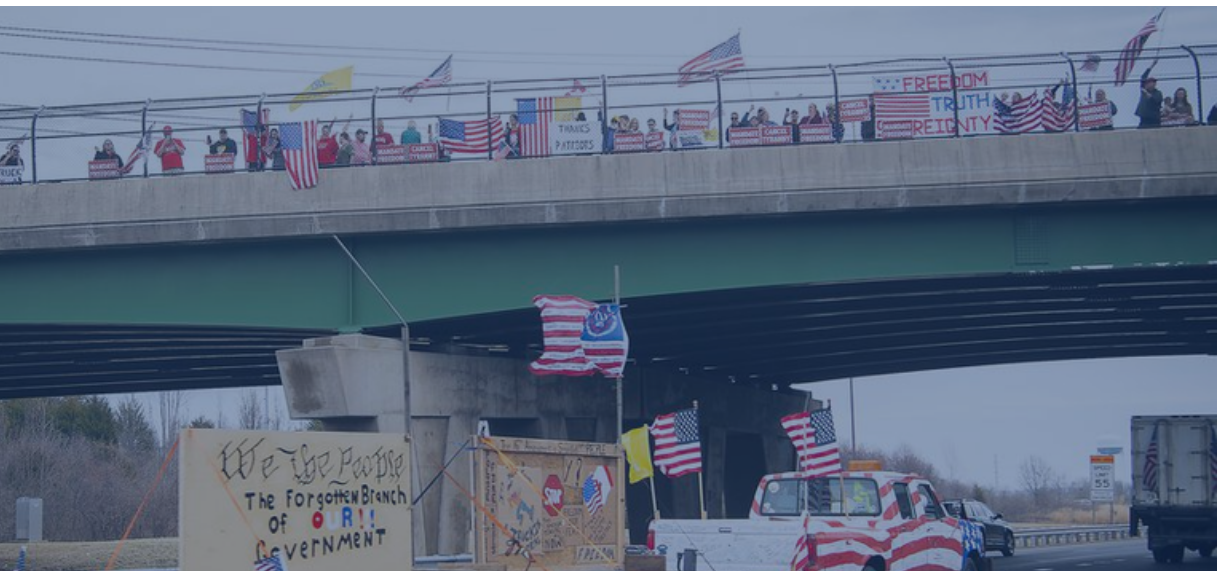
In Terminiello v. City of Chicago, the Court held that one cannot be sued for engaging in speech on a matter of public concern in a traditional public forum such as a street or sidewalk. The Supreme Court overturned a disorderly conduct conviction, where a speaker angered a crowd of about 1000 protestors by denouncing various political and racial groups.**23** Even though a riot broke out after he spoke, his speech could not be prohibited. The speaker did not raise his voice above the ambient noise level, disrupt traffic, or personally confront anyone. If members of the public actually threaten public safety, government entities can stop their dangerous conduct. Yet so long as their conduct is orderly and polite, they have a First Amendment right to free speech, even if the public reacts badly to their speech.

(21) 310 U.S. 296 (1940). **(22)** 131 S.Ct. 1207 (2011). **(23)** 337 U.S. 1, 3-4 (1949).

Q: What about carrying signs along a highway or displaying them from an overpass?

A: Some additional safety concerns come into play when you're thinking about carrying signs along a major highway or holding signs on an overpass to be seen by drivers below. In California, though, the courts have not been willing to give authorities carte blanche to restrict this type of expression. In a case called *Brown v. Cal. Dept. of Transportation*,**24** Cassandra Brown hung anti-war banners above Highway 17 in Santa Cruz following the 9/11 terrorist attack. A Scotts Valley police officer removed the banners, which led Brown to again hang banners in the same place. The second group of banners were removed. The California Department of Transportation stated that any citizens wishing to display a sign on a California highway overpass were first required to obtain a permit. But only signs that designate turn offs for an event are permitted. CalTrans does, however, permit the American flag to be displayed on an overpass. The Ninth Circuit Court of Appeals ruled that CalTrans' suggestion that the anti- war messages be alternatively displayed on bill board space imposes a financial burden on one viewpoint and not the other. The Court sided with Brown, declaring, "In the wake of terror, the message expressed by the flags flying on California's highways has never held more meaning. America, shielded by her very freedom, can stand strong against regimes that dictate their citizenry's expression only by embracing her own sustaining liberty."

(24) 321 F. 3d 1217 (9th Cir. 2003).



Q: What are my rights to evangelize in shopping malls?

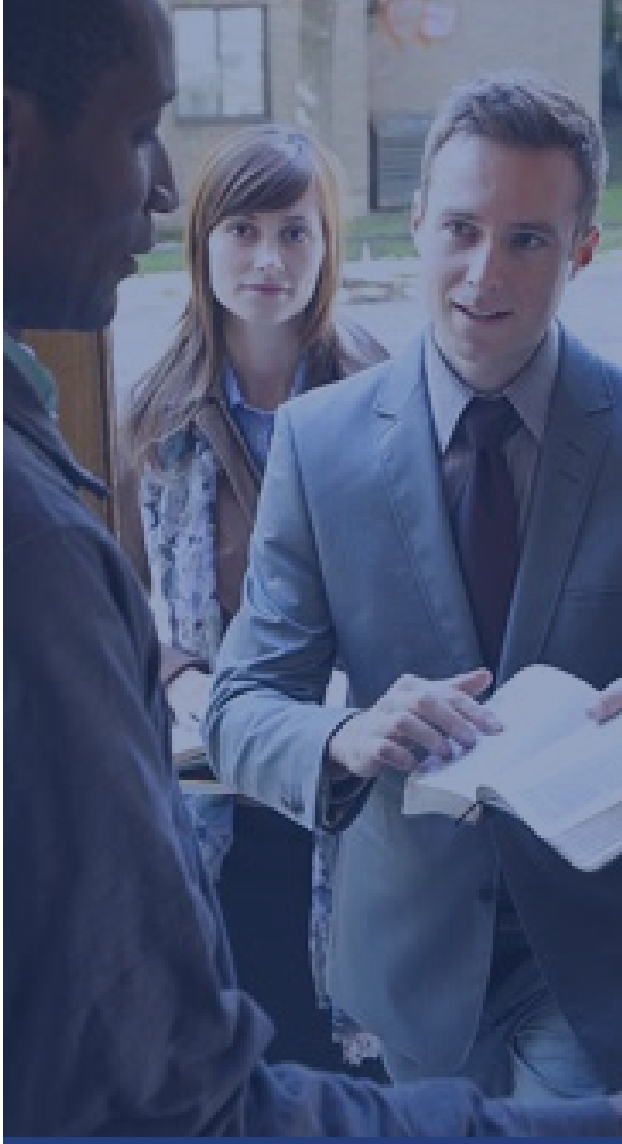
A: In most states, shopping malls are considered private property and your rights can be greatly restricted by the owners or management of the mall. California and New Jersey are the only states that consider shopping malls as public forums, both basing these enlarged rights to expression on their own Constitutions. In California, a series of court decisions have deemed large shopping malls to be equivalent to public forums, and open to free speech under the state constitution. Beginning in the late 1970s, the California Supreme Court interpreted the California Constitution to create free speech rights in large shopping malls.**25** The U.S. Supreme Court approved this expansion of speech rights in the Golden State, notwithstanding its corresponding restriction on property rights, in *Pruneyard Shopping Ctr. v. Robins*.**26** The *Pruneyard* case involved students gathering signatures for a political petition. More recently, in a case called *Snatchko v. Westfield, LLC*,**27** Pacific Justice Institute represented Matthew Snatchko, a youth pastor who often went to a large shopping mall in a Sacramento suburb to share his faith. One day Mr. Snatchko approached three young women in their late teens, asked them if they were willing to talk with him, and upon receiving their consent, engaged them in conversation, which included, with their permission, sharing with them principles of his faith. A nearby store employee thought the teens looked uncomfortable with the discussion, so they called security, who roughly arrested Snatchko. The criminal charges were later dropped, but Snatchko commenced a civil suit with PJI's help to prevent the same thing from happening again. The trial court sided with the mall, but the Court of Appeals reversed. It held that, like other public forums, a shopping mall can place reasonable time, place, and manner restrictions on those visiting the mall, as long as the restrictions are content-neutral. Restrictions that allow speech between strangers on subjects related to the business of the mall but require a permit for speech between strangers on any other subject are content-based and therefore are subject to strict scrutiny. When examined in light of strict scrutiny, such rules are unconstitutional. Like California, the courts in New Jersey also have an expanded view of free speech.**28**

(25) (23) 321 F. 3d 1217 (9th Cir. 2003). **(26)** 447 U.S. 74 (1980). **(27)** 187 Cal.App.4th 469 (Cal. Ct. App. 3d Dist. 2010). **(28)** State v. Schmidt, 423 A.2d 615 (N.J. 1980).

Q: Can a city prohibit door-to-door evangelism?

A: No, though individual residents may post “no solicitation” signs that should be respected. The Supreme Court has addressed this in several cases involving the Jehovah’s Witnesses. One of the earliest cases was Murdock v. Pennsylvania, quoted above in reference to literature distribution. More recently, in Watchtower Bible & Tract Society v. Village of Stratton,[29] the Village of Stratton in Ohio put into effect their municipal ordinance that banned canvassers from entering private property to promote any cause without a permit from the mayor’s office. The Watchtower Bible & Tract Society, a group of Jehovah’s Witnesses who publish and distribute tracts, sued the Village of Stratton for violation of free speech rights. The District Court and the Sixth Circuit Court of Appeals ruled that the Village had a valid interest in protecting residents from fraud. However, the Supreme Court decided the ordinance infringed on the right to anonymous pamphleteering and religious proselytizing. The Court held that the Village’s reasoning behind the desire to prevent fraud and promote safety was not enough to justify the making of door-to-door advocacy a misdemeanor.

(29) 536 U.S. 150 (2002).



Q: What should I do if I am confronted by police or security guards when I am evangelizing?

A: Remain calm and respectful; ask to see the ordinance you are accused of violating. In anticipation of such confrontations, we recommend that you adopt the practice of recording your preaching or other evangelistic outreaches whenever possible with audio and video. This can counter later claims that you were being unreasonably loud, were interfering with traffic or were otherwise acting outside your constitutional rights.

Q: What should I do if I am arrested for preaching or public evangelism?

A: Call Pacific Justice Institute immediately!

For any other questions or concerns, please contact

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