LIBERTY TO PREACH

confirmed and upheld by the

United States Supreme Court

Memorandum and Legal Opinion

in behalf of

Jehovah's witnesses

By

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LIBERTY TO PREACH

STATEMENT OF FACTS

In the short space of three years some two thousand of Jehovah's witnesses have been arrested and haled before courts in the United States. They have been charged with violation of many kinds of ordinances. On March 28, 1938, the United States Supreme Court in the case of *Lovell* v. *City of Griffin*, 303 U. S. 444, reviewed their activities and upheld and confirmed their right to visit people at their homes and offer to them books, booklets, or pamphlets containing the message of the gospel in printed form. This momentous decision put an end to much of this unlawful opposition, but there are still some places where officials do not understand the principles so clearly stated by the Nation's highest court, and continue to interfere with the beneficial activities of sincere followers of Jesns Christ.

This memorandum is submitted so that all may understand and act accordingly.

In the *Lovell* v. *Griffin* case the Supreme Court of the United States declared invalid an

ordinance of Griffin, Georgia, which imposed a license requirement to sell or distribute free printed matter in the city. The Court in clear and unmistakable terms stated the rights and liberties of all persons engaged in circulating printed matter. It established certain fundamental propositions which no municipal legislative body, police court, or police officials have authority to override. They are as follows:

FIRST: Liberty of the press is not confined to newspapers, magazines, and periodicals, but includes pamphlets, leaflets, books and every sort of printed communication used to convey information or opinion. Jehovah's witnesses are engaged in the circulation of books, booklets and periodicals containing Bible truths, and their activity is that of the press. They are therefore entitled to the constitutional guarantees of freedom of the press.

SECOND: Liberty of the press goes beyond the right of publication and includes the right of circulation. Jehovah's witnesses are engaged in the publication and circulation of printed matter and have the right to do so unhampered by restrictions of license or censorship.

THIRD: No municipality has the right to require a license or permit for the exercise of any person's right to disseminate information in printed form. To require a license, in the

words of Chief Justice Hughes, is to 'strike at the very foundation of freedom of the press'. Whether such printed matter is sold, or delivered free, or whether contributions are accepted in exchange for it, is not material. The point is that such activity cannot be lawfully subjected to licensing or permit laws or ordinances.

A complete copy of this decision is annexed to this memorandum.

ARGUMENT

POINT ONE

An ordinance requiring a license for distribution of printed matter is invalid on its face.

The Griffin (Ga.) ordinance prohibited the distribution of "circulars, handbooks, advertising, or literature of any kind" without a permit or license from the City Manager. Concerning it, the Supreme Court said:

> "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."

All similar ordinances and statutes are rendered null and void by virtue of the law declared and established in this decision.

POINT TWO

An ordinance requiring a license for the sale of goods, wares and merchandise becomes invalid when applied to the sale of printed matter containing information or opinion.

Practically all municipalities have ordinances requiring licenses for the sale of goods, wares and merchandise. Under the Supreme Court ruling such ordinances cannot lawfully be applied to the circulation of printed matter. Some claim that the Supreme Court meant that only ordinances requiring licenses for the *free* distribution of literature were invalid. This claim is not sound. It means that a person would be entitled to the constitutional guarantees of freedom of the press if he gave printed matter away, but if he sold it he would not be entitled to this fundamental liberty. The argument is, therefore, foolish. Newspapers, magazines, and periodicals are sold for money. The newspaper industry is a profitable one and many have grown wealthy through it. They are entitled to all the guarantees of freedom of the press, even though they do gain wealth through it. So likewise, the humble witness of Jehovah may deliver the gospel of the Kingdom in printed form and receive money or other contributions to assist the Kingdom work, and be entitled to the fundamental guarantees of freedom of speech and

press. When any peddling ordinance is applied to this form of work the ordinance thus becomes invalid as applied and the arrest and imprisonment an unlawful one.

POINT THREE

An ordinance prohibiting uninvited calls at the houses of residents by persons selling merchandise becomes invalid when applied to the sale of printed matter containing information or opinion.

In many cities, towns and villages of the country ordinances designated the "Green River Ordinance" are being enacted and enforced. This type of ordinance prohibits making calls at the homes of residents by hawkers, peddlers, itinerant merchants or transient vendors of merchandise for the purpose of selling goods, wares or merchandise without the prior invitation of the householder. The ordinance in effect says that any person desiring to sell any commodities to the inhabitants of a town at their homes must first have their invitation or permission to call. It is virtually a prohibition on selling from house to house. Although Jehovah's witnesses are not hawkers, peddlers, or vendors of merchandise, a number of them have been arrested and charged with violation of this type of ordinance.

The ordinance of Griffin, Georgia, was held

invalid because it required a license to sell or give away printed matter. Under that ordinance the person desiring to sell or give away printed matter had to secure permission from just one person, the City Manager. Under this so-called "Green River" type of ordinance the one desiring to sell printed matter must secure permits from all residents of the town.

By way of illustration: Suppose an individual prints a book conveying important information concerning local political matters. He cannot afford to give away copies free, but can circulate it throughout the city by securing a small sum for each copy. Under the Griffin type of ordinance he could secure permission from one man, the City Manager, and proceed with its distribution. The Supreme Court, however, held this requirement a denial of freedom of the press. Therefore he can circulate his book without securing permission from anyone. Under the Green River type of ordinance this person is prohibited from selling his book except at homes which have given him a prior invitation to call for that purpose. In a town of one thousand homes he would thus have to secure one thousand permits or licenses to circulate his book throughout that community. This is greater denial of freedom of the press than that of the Griffin ordinance. It can be clearly seen that the application of the Green River type of ordi-

nance to the work of circulating printed matter denies liberty and would be held invalid by the high courts.

POINT FOUR

An ordinance prohibiting the soliciting of contributions for religious or charitable causes without a license becomes invalid when applied to the taking of contributions in exchange for printed *matter containing information or opinion.*

Jehovah's witnesses leave printed matter with the people and accept in exchange therefor contributions to help print more like literature. Some municipalities require a license to solicit donations or contributions for any philanthropic, charitable or religious cause. To apply such ordinance to the work of Jehovah's witnesses brings it into conflict with the legal propositions stated in the Lovell decision. The ordinance becomes a means of requiring a license to circulate printed matter containing information or opinion. The fact that a contribution definite or indefinite in amount may be received in exchange for such printed matter does not remove from the act of distribution the guarantee of freedom of the press. The Lovell decision is emphatic upon the point that the press cannot lawfully be subjected to license or censorship. Whether printed matter is de-

livered free or sold, or circulated in exchange for contributions, is entirely immaterial; and the ordinance so applied becomes invalid as a denial of liberty of the press.

POINT FIVE

Any law or ordinance prohibiting distribution of printed matter containing information or opinion which is offensive or abusive concerning some person, or which may incite or promote hatred, hostility or violence against any group of persons by reason of race, color, religion or manner of worship, is invalid on its face because it unduly restricts and denies freedom of speech and press.

The Kingdom message circulated by Jehovah's witnesses declares the day of vengeance of Almighty God and turns the searchlight of truth upon traditions of men and fraudulent practices of religionists. For this reason it is sometimes claimed that the message is offensive. It *is* offensive to hypocritical vendors of religion, in the same sense that the truth is offensive to a liar. It is further claimed that the message incites and promotes hostility and hatred against some people, on account of their religion. This is not true. Publication of the truth might promote hostility against false doctrines or false religious practices, but would never incite or promote hatred or hostility against per-

sons because they are Catholics, or Protestants, or Jews, or of any other creed or organization.

The United States Supreme Court in the case of *Schenck* v. *U. S.*, 249 U. S. 47, at page 52, holds that any restriction on freedom of speech or press must be justified by showing that the act complained of constitutes a "clear and present danger" of some substantial evil to public safety. This means that the circulation of printed matter containing information or opinion may not be prohibited or restricted even though it is offensive to some priest, preacher, religionist, politician or financier. It may not be prohibited even though it does mercilessly peel off the pious, sanctified front of the modern-day Pharisees, and expose the extortion and filth within. Such exposure does not create any "clear and present danger" to the state. On the contrary, it is a benefit to all honest persons.

In a case at New Haven, Connecticut, involving three of Jehovah's witnesses charged with distributing offensive matter and matter holding people up to contempt on account of their creed or religion, the Common Pleas Court dismissed the complaint. The court examined the printed matter so distributed, and in its decision (filed September 6, 1938) stated:

> "I regard them [the books circulated by Jehovah's witnesses] as matters which the

> author may lawfully write and the accused lawfully possess. . . . I am as little willing to declare them unlawful *per se* as I would be to declare that a Christian may not argue the Divinity of Christ, a Jew deny it, and a Confucianist ignore it as a legend. It is not the function of the courts to either coerce or curb thinking or expression, but at most to restrain *license* of expression as related to time, place and circumstances, all of which must be related in the final analysis to the question of potential danger to the established order as represented by the system of government accepted by the people as a whole."

This Connecticut decision correctly states the law, and any complaint filed against Jehovah's witnesses under similar statutes or ordinances should be dismissed.

POINT SIX

Application of these types of ordinances to the work of Jehovah's witnesses unreasonably restricts and denies the right to worship Almighty God in accordance with the dictates of conscience.

Religious freedom is guaranteed to all people under the State Constitutions. It is likewise guaranteed under the "due process" clause of the Fourteenth Amendment to the Federal Constitution.

Meyer v. *Nebraska*, 262 U. S. 390
Hamilton v. *Regents*, 293 U. S. 245

(A)

The ordinances restrict freedom of worship.

Jehovah's witnesses are engaged in an actual worship of Almighty God. In obedience to the written command to all followers of Jesus Christ to preach the gospel, Jehovah's witnesses call upon the people at their homes to present to them the Bible message. These ordinances would restrict such activity by requiring a permit to engage therein. They would restrict the hours of activity of Jehovah's witnesses and subject their work and character to censorship by law.

They cannot meet the conditions of the ordinance without their religious rights' being infringed; for the record shows it to be their conscientious belief that to apply for said permit would be an act of disobedience to the command of Almighty God.

(B)

Municipalities must justify such restriction of religious freedom by showing that the acts complained of violate the laws of morality or property, or infringe on personal rights.

The extent to which religious freedom abounds in this country is well stated as follows:

> "In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights is conceded to all."
> *Watson* v. *Jones,* 13 Wall. (U. S.) 679, 728
> *State* v. *De Laney,* 1 N. J. Misc. 619

Jehovah's witnesses are commanded in His written Word, the Bible, to preach the gospel. They are arrested for engaging in the practice of a religious principle, to wit, the principle that Christians must "preach the word; be instant in season, out of season . . . " They have the full and free right to practice that principle unless by so doing they violate the laws of morality or property or infringe on personal rights. To justify application of the restrictive terms of the ordinance to the acts of these God-fearing persons the burden is on the municipality to show that they violate the laws of morality or property or infringe on personal rights.

(C)

These ordinances as applied are invalid because they contravene the law of Almighty God, which is supreme and above all human laws.

Blackstone, the leading exponent of the common law, states with precision and clarity the relation of the statute law to the higher law of the Creator. The law of man is definitely and explicitly stated to be subject to such higher law. We quote:

> "Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being. . . .
>
> "Upon these two foundations, the law of nature, and the law of revelation, depend all human laws. *That is to say no human laws should be suffered to contradict these.* . . .
>
> "Nay, if any human law should enjoin or allow us to commit it [an act contrary to Divine law], *we are bound to transgress the human law, or else we must offend both the natural and the divine.*"—*Blackstone Commentaries,* Chase 3d ed. 5-7.

We know of no decision, ruling, statute or ordinance that has reversed or limited this clear and lucid explanation by Blackstone. Down through the years the statesmen and lawmakers have recognized these principles.

The various states in adopting their state constitutions have recognized their complete dependency upon the Creator for the blessings of

life, liberty and happiness. We cite the provision of the New Jersey Constitution as a sample:

> "We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

This dependency of the State upon the Creator is further evidenced in the fact that in the United States of America the clergy are hired at public expense to invoke the Divine aid and guidance for state and national legislative assemblies at their sessions.

The courts use the Bible and the phrase "So help me, God" in administering oaths.

The courts and public buildings are closed on the first day of each week out of deference to what is believed to be a God-given day of rest. Many conrt decisions recognize the supremacy of the Creator, and the divine inspiration of His Word, the Bible.

By Act of Congress providing therefor, the motto "In God We Trust" is regularly inscribed upon all coins of the United States except the nickel five-cent piece and so-called "commemorative" coins issued occasionally in limited quantity.

Can the state, or any municipality thercin, then be heard to say that its laws are superior to the laws of Almighty God? Can the creature dictate to the Creator? The answer must be, emphatically, No. The state and its subdivisions are estopped from asserting supremacy over the laws of God.

All Christians are commanded by the law of God to walk in the footsteps of Jesus and preach the gospel. (Acts 20:20; 1 Peter 2:21; 1 Corinthians 9:16) This Jehovah's witnesses do in obedience to the Divine mandate. To apply these ordinances to their mission is to reject the principle of the supremacy of the law of Almighty God and move forward to the establishment of a state religion such as abounds now in European countries.

In these modern days a monstrosity has appeared across the waters, endangering the safety and liberty of all peoples of earth. This monstrosity may well be designated a "state religion". It is the theory or teaching that the state is supreme over all, and that supreme allegiance is due to it by all its subjects. This appeared first in Soviet Russia, where under governmental action the state has been exalted above Almighty God and above everything pertaining to His Kingdom under Christ Jesus. In Fascist Italy and in Nazi Germany that monstrosity has also appeared. In these perilous

times this hideous monstrosity has wrecked civic liberties of the people and brought fear and distress to millions in continental Europe.

The actions of some officials and the decisions of some courts manifest that there is real danger of this alien totalitarian theory of government being adopted and put in practice in the United States. Thousands of Jehovah's witnesses have been subjected to arrest and imprisonment during the past few years. They are Christians and their only "offense" is that they obey the law of God to preach the gospel and will not subject His mandates to the requirements of local ordinances. Some authorities have stated, "We don't care what the law of God is; our ordinance comes first. You must obey our ordinance regardless of commands from the Most High God." Thus the American States' constitutional declarations of gratitude of the people to Almighty God for the civil and religious liberty given to them become a hypocritical mockery.

JEHOVAH'S WITNESSES are not hawkers, peddlers, or solicitors. They are not engaged in any commercial enterprise. They are not political agents. In obedience to the mandate of Almighty God, they preach the good news of His everlasting Kingdom under Christ Jesus, from place to place and house to house. Their right to do so has been upheld by the highest court of the land. Unlawful interference therewith by offi-

cers of the law, or others, is anarchistic, destructive of liberty, and will be vigorously resisted by means of every instrumentality that the law provides.

Respectfully submitted,

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SUPREME COURT
OF THE UNITED STATES

Alma Lovell,
Appellant,

vs.

The City of Griffin.

Appeal from the Court of Appeals of the State of Georgia.

[March 28, 1938.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

Appellant, Alma Lovell, was convicted in the Recorder's Court of the City of Griffin, Georgia, of the violation of a city ordinance and was sentenced to imprisonment for fifty days in default of the payment of a fine of fifty dollars. The Superior Court of the county refused sanction of a petition for review; the Court of Appeals affirmed the judgment of the Superior Court (55 Ga. App. 609); and the Supreme Court of the State denied an application for certiorari. The case comes here on appeal.

The ordinance in question is as follows:

"Section 1. That the practice of distributing,

either by hand or otherwise, circulars, handbooks, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, within the limits of the City of Griffin, without first obtaining written permission from the City Manager of the City of Griffin, such practice shall be deemed a nuisance, and punishable as an offense against the City of Griffin.

"Section 2. The Chief of Police of the City of Griffin and the police force of the City of Griffin are hereby required and directed to suppress the same and to abate any nuisance as is described in the first section of this ordinance".

The violation, which is not denied, consisted of the distribution without the required permission of a pamphlet and magazine in the nature of religious tracts, setting forth the gospel of the "Kingdom of Jehovah". Appellant did not apply for a permit, as she regarded herself as sent "by Jehovah to do His work" and that such an application would have been "an act of disobedience to His commandment".

Upon the trial, with permission of the court, appellant demurred to the charge and moved to dismiss it upon a number of grounds, among which was the contention that the ordinance violated the Fourteenth Amendment of the Constitution of the United States in abridging "the freedom of the press" and prohibiting "the free

exercise of petitioner's religion". This contention was thus expressed:

"Because said ordinance is contrary to and in violation of the first amendment to the Constitution of the United States, which reads:

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.'

"Said ordinance is also contrary to and in violation of the fourteenth amendment to the Constitution of the United States, which had the effect of making the said first amendment applicable to the States, and which reads:

'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws'.

"Said ordinance absolutely prohibits the distribution of any literature of any kind within the limits of the City of Griffin without the permission of the City Manager and thus abridges the freedom of the press, contrary to the provisions of said quoted amendments.

"Said ordinance also prohibits the free exercise of petitioner's religion and the practice thereof by prohibiting the distribution of literature about petitioner's religion in violation of the terms of said quoted amendments".

The Court of Appeals, overruling these objections, sustained the constitutional validity of the ordinance, saying—

"The ordinance is not unconstitutional because it abridges the freedom of the press or prohibits the distribution of literature about the petitioner's religion, in violation of the fourteenth amendment to the constitution of the United States."

While in a separate paragraph of its opinion the court said that the charge that the ordinance was void because it violated a designated provision of the state or federal constitution without stating wherein there was such a violation, was too indefinite to present a constitutional question, we think that this statement must have referred to other grounds of demurrer and not to the objection above quoted which was sufficiently specific and was definitely ruled upon. The contention as to restraint "upon the free exercise of religion", with respect to the same ordinance, was presented in the case of *Coleman v. City of Griffin*, 55 Ga. App. 123, and the appeal was dismissed (October 11, 1937) for want of a substantial federal question. *Reynolds* v.

United States, 98 U. S. 145, 166, 167; *Davis* v. *Beason*, 133 U. S. 333, 342, 343. But, in the *Coleman* case, the Court did not deal with the question of freedom of speech and of the press as it had not been properly presented. We think that this question was adequately presented and was decided in the instant case. Whether it was so presented and was decided is itself a federal question. *Carter* v. *Texas*, 177 U. S. 442, 447; *Ward* v. *Love County*, 253 U. S. 17, 22; *First National Bank* v. *Anderson*, 269 U. S. 341, 346; *Schuylkill Trust Co.* v. *Pennsylvania*, 296 U. S. 113, 121. This Court has jurisdiction.

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*, 268 U. S. 652, 666; *Stromberg* v. *California*, 283 U. S. 359, 368; *Near* v. *Minnesota*, 283 U. S. 697, 707; *Grosjean* v. *American Press Company*, 297 U. S. 233, 244; *De Jonge* v. *Oregon*, 299 U. S. 353, 364. See, also, *Palko* v. *Connecticut*, decided December 6, 1937. It is also well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment. *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Home Telephone & Telegraph Co.* v.

Los Angeles, 227 U. S. 278; *Cuyahoga Power Company* v. *Akron*, 240 U. S. 462.

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 evidence against appellant was that she distributed a certain pamphlet and a magazine called the "Golden Age". Whether in actual administration the ordinance is applied, as apparently it could be, to newspapers does not appear. The City Manager testified that "every one applies to me for a license to distribute literature in this City. None of these people (including defendant) secured a permit from me to distribute literature in the City of Griffin". 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." [1] 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. See *Patterson* v. *Colorado*, 205 U. S. 454, 462; *Near* v. *Minnesota*, 283 U. S. 697, 713-716; *Grosjean* v. *American Press Company*, 297 U. S. 233, 245, 246. Legislation of the

[1] See Wickwar, "The Struggle for the Freedom of the Press", p. 15.

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. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near* v. *Minnesota, supra; Grosjean* v. *American Press Company, supra; De Jonge* v. *Oregon, supra.*[2]

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

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[2] See also, Starr *v.* Brush, 185 App. Div. (N. Y.) 261; Dearborn Publishing Company *v.* Fitzgerald, 271 Fed. 479; Ex parte Campbell, 221 Pac. 952; Coughlin *v.* Sullivan, 100 N. J. L. 12. Compare People *v.* Armstrong, 73 Mich. 288; City of Chicago *v.* Schultz, 341 Ill. 208; People *v.* Armentrout, 118 Cal. App. 761.

little value". *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean* v. *American Press Company, supra*, was held invalid because of its direct tendency to restrict circulation.

As the ordinance is void on its face, it was not necessary for appellant to seek a permit under it. She was entitled to contest its validity in answer to the charge against her. *Smith* v. *Cahoon*, 283 U. S. 553, 562.

The judgment is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice CARDOZO took no part in the consideration and decision of this case.