

The Right To Distribute Our Literature

Guaranteed by the U.S. Constitution

The U.S. Constitution is by definition the basic law of the land: no federal, state, county, city or community law can contradict any of the basic principles of the Constitution. In fact, all policemen and judges are supposed to abide by the Constitution.

“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.”

As you can see from the above quotation, the First Amendment of the U.S. Constitution guarantees every citizen, among other things, freedom of speech. In regard to leafleting, the Supreme Court has interpreted this to mean that a state or municipality may not ban the distribution of leaflets on streets, sidewalks or public places. **Jamison v. Texas 318 US 413 (1943) and Marsh v. Alabama 326 US 501 (1946)**. The Supreme Court applied this rule to universities both state and private, in **Papish v. University of Missouri 410 US 667 (1973)**. Furthermore, leafleting cannot be prohibited on a military base in areas of public access, **Flower v. U.S. 407 US 197 (1972)**.

The Supreme Court has also found that door to door solicitations for the purpose distributing information may not be banned regardless of the wishes of the householder to receive such information in this manner, **Martin v. Struthers 319 US 141 (1943)**. Furthermore, a state or municipality may not tax or license the distribution or sale of political or religious material door to door, **Opelika v. Jones 319 US 105 (1943)**.

In shopping center cases the Supreme Court has said that privately owned property may be treated as if it is publicly held where it is held open to the public, **Amalgamated Food Employees Union v. Logan Valley Plaza 391 US 308 (1968)**. In Amalgamated the union was allowed to picket a business inside the shopping mall. However, a shopping center may ban leafleting in the shopping mall walkways as this interferes with the business of the center, **Lloyd Corp. V. Tanner 407 US 551 (1972)**. As yet there has been no case decided on the question of leafleting in the parking lot of a shopping center, but a leading treatise of the First Amendment says this on the subject: *“The First Amendment interest should not be defeated because the property owner wither disapproves of the message conveyed or simply wants to censor all speech activities. Whether outside of a freestanding store or in the common areas of a shopping center, a bare property interest does not justify the subordination of First Amendment speech rights.”* **Nimmer on Freedom of Speech, Section 4.09, Page 4-121.**

In light of the above, we recommend that in the event of arrest while leafleting in one of the above areas, the individual arrested should file a civil suit for false imprisonment, malprosecution and the intentional deprivation of constitutional rights and that the parties sued should include the municipality, the police department, the arresting officer and the private property owner (in a shopping center case). In such a case, punitive as well as compensatory damages will be awarded.