JONES v. OPELIKA
SUPREME COURT OF THE UNITED STATES
316 U.S. 584
June 8, 1942
[5 - 4]

In less than one year, this result was vacated. See Murdock v. Pennsylvania (Case 1A-R-3c on this website.).

OPINION: REED...We have before us the question of the constitutionality of various city ordinances imposing the license taxes upon the sale of printed matter for nonpayment of which the appellant, Jobin, and the petitioners, Jones, Bowden and Sanders, all members of the organization known as Jehovah's Witnesses, were convicted.

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The City of Opelika, Alabama,...charged Jones with violation of its licensing ordinance by selling books without a license, by operating as a Book Agent without a license, and by operating as a transient agent, dealer or distributor of books without a license. The license fee for Book Agents (Bibles excepted) was $10 per annum, that for transient agents, dealers or distributors of books $5.

Under section 1 of the ordinance **all licenses were subject to revocation in the discretion of the City Commission, with or without notice**...Jones [alledged] that the ordinance...[was] an unconstitutional encroachment upon **freedom of the press**. During the trial without a jury these contentions, with the added claim of interference with **freedom of religion**, were renewed at the end of the city's case, and at the close of all the evidence. The court...found Jones guilty on evidence that without a license he had been displaying pamphlets in his upraised hand and walking on a city street selling them two for five cents. **The court excluded as irrelevant testimony designed to show that the petitioner was an ordained minister, and that his activities were in furtherance of his beliefs and the teachings of Jehovah's Witnesses...**

Procedurally, the case has a rather complicated history. Suffice it to say that these parties are coming to the Supreme Court as convicted and all are seeking a reversal.

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Bowden and Sanders were arrested by police officers of Fort Smith, Arkansas, brought before the Municipal Court on charges of violation of City Ordinance No. 1172, and convicted...The

ordinance required a license 'For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25 per month, $10 per week, $2.50 per day.' The petitioners, in the exercise of their beliefs concerning their duty to preach the gospel, admitted going from house to house without a license, playing phonographic transcriptions of Bible lectures, and distributing books setting forth their views to the residents in return for a contribution of twenty-five cents per book. When persons desiring books were unable to contribute, the books were in some instances given away free. [They alledge the ordinance is an unconstitutional restriction of freedom of religion and of the press in violation of the 1st and 14th Amendments.]

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The City of Casa Grande, Arizona, by ordinance made it a misdemeanor for any person to carry on any occupation or business specified without first procuring a license.

Transient merchants, peddlers and street vendors were listed as subject to a quarterly license fee of $25.00, payable in advance...Jobin was tried and convicted by a jury on a complaint charging that not having 'a permanent place of business in the City' he there carried on the 'business of peddling, vending, selling, offering for sale and soliciting the sale of goods, wares and merchandise, to wit: pamphlets, books and publications without first having procured a license,' contrary to the ordinance. The evidence for the state showed that without a license the appellant called at two homes and a laundry and offered for sale and sold books and pamphlets of a religious nature. At one home, accompanied by his wife, he was refused admission, but was allowed by the girl who came to the door to play a portable phonograph on the porch. The girl purchased one of his stock of books, 'Religion,' for a quarter, and received a pamphlet free. During the conversation he stated that he was an **ordained minister preaching the gospel** and quoted passages from the Bible. At the second home the lady of the house allowed him and his wife to enter and play the phonograph, but she refused to buy either books or pamphlets. When departing the appellant left some literature on the table although informed by the lady that it would not be read and had better be given to someone else. At the laundry the appellant introduced himself as one of the Jehovah's Witnesses and discussed with the proprietor their work and religion generally. The proprietor bought the book 'Religion' for a quarter but declined to buy others at the same price. He was given a pamphlet free. When arrested the appellant stated that he was 'selling religious books and preaching the gospel of the kingdom,' and that because of his religious beliefs he would not take out a license.

These cases from Alabama, Arkansas and Arizona were consolidated on appeal due to their similarity.

[None of the parties contested the size of the fees.] Consequently there is not before us the question of the power to lay fees, objectionable in their effect because of their size, upon the constitutionally protected rights of free speech, press or the exercise of religion...The sole constitutional question considered is whether a nondiscriminatory license fee, presumably appropriate in amount, may be imposed upon these activities.

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We turn to the constitutional problem squarely presented by these ordinances. There are ethical principles of greater value to mankind than the guarantees of the Constitution, personal liberties which are beyond the power of government to impair. These principles and liberties belong to the mental and spiritual realm where the judgments and decrees of mundane courts are ineffective to direct the course of man. The rights of which our Constitution speaks have a more earthy quality. They are not absolutes to be exercised independently of other cherished privileges, protected by the same organic instrument. **Conflicts in the exercise of rights arise and the conflicting forces seek adjustments in the courts, as do these parties, claiming on the one side the freedom of religion, speech and the press, guaranteed by the Fourteenth Amendment, and on the other the right to employ the sovereign power explicitly reserved to the State by the Tenth Amendment to ensure orderly living without which constitutional guarantees of civil liberties would be a mockery.** Courts, no more than Constitutions, can intrude into the consciences of men or compel them to believe contrary to their faith or think contrary to their convictions, but courts are competent to adjudge the acts men do under color of a constitutional right, such as that of freedom of speech or of the press or the free exercise of religion and to determine whether the claimed right is limited by other recognized powers, equally precious to mankind. So the mind and spirit of man remain forever free, while his actions rest subject to necessary accommodation to the competing needs of his fellows.

If all expression of religion or opinion, however, were subject to the discretion of authority, our unfettered dynamic thoughts or moral impulses might be made only colorless and sterile ideas. To give them life and force, the Constitution protects their use. No difference of view as to the importance of the freedoms of press or religion exist. They are 'fundamental personal rights and liberties.' To proscribe the dissemination of doctrines or arguments which do not transgress military or moral limits is to destroy the principal bases of democracy—knowledge and discussion. One man, with views contrary to the rest of his compatriots, is entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read. Too many settled beliefs have in time been rejected to justify this generation in refusing a hearing to its own dissentients. But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order.

This means that the proponents of ideas cannot determine entirely for themselves the time and place and manner for the diffusion of knowledge or for their evangelism, any more than the civil authorites may hamper or suppress the public dissemination of facts and principles by the people. The ordinary requirements of civilized life compel this adjustment of interests. The task of reconcilement is made harder by the tendency to accept as dominant any contention supported by a claim of interference with the practice of religion or the spread of ideas. **Believing as this nation has from the first that the freedoms of worship and expression are closely akin to the illimitable privileges of thought itself, any legislation affecting those freedoms is scrutinized to see that the interferences allowed are only those appropriate to the maintenance of a civilized society.** The determination of what limitations may be permitted under such an abstract test rests with the legislative bodies, the courts, the executive and the people themselves guided by the experience of the past, the needs of revenue for law

enforcement, the requirements and capacities of police protection, the dangers of disorder and other pertinent factors.

Upon the courts falls the duty of determining the validity of such enactments as may be challenged as unconstitutional by litigants. In dealing with these delicate adjustments this Court denies any place to administrative censorship of ideas or capricious approval of distributors. In Lovell v. Griffin[1], the requirements of permission from the city manager invalidated the ordinance; in Schneider v. State[2], that of a police officer. In the Cantwell[3] case, the secretary of the public welfare council was to determine whether the object of charitable solicitation was worthy. We held the requirement bad. **Ordinances absolutely prohibiting the exercise of the right to disseminate information are, a fortiori, invalid.**

A fortiori = with convincing reason.

The differences between censorship and complete prohibition, either of subject matter or the individuals participating, upon the one hand, and regulation of the conduct of individuals in the time, manner and place of their activities upon the other, are decisive...**There is to be noted...a distinction between nondiscriminatory regulation of operations which are incidental to the exercise of religion or the freedom of speech or the press and those which are imposed upon the religious rite itself or the unmixed dissemination of information.** Casual reflection verifies the suggestion that both teachers and preachers need to receive support for themselves as well as alms and benefactions for charity and the spread of knowledge. But when, as in these cases, the practitioners of these noble callings choose to utilize the vending of their religious books and tracts as a source of funds, the financial aspects of their transactions need not be wholly disregarded. To subject any religious or didactic group to a reasonable fee for their money-making activities does not require a finding that the licensed acts are purely commercial. It is enough that money is earned by the sale of articles. A book agent cannot escape a license requirement by a plea that it is a tax on knowledge. It would hardly be contended that the publication of newspapers is not subject to the usual governmental fiscal exactions or the obligations placed by statutes on other business. The Constitution draws no line between a payment from gross receipts or a net income tax and a suitably calculated occupational license. Commercial advertising cannot escape control by the simple expedient of printing matter of public interest on the same sheet or handbill. Nor does the fact that to the participants a formation in the streets is an 'information march,' and 'one of their ways of worship,' suffice to exempt such a procession from a city ordinance which, narrowly construed, required a license for such a parade.

When proponents of religious or social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing. Careful as we may and should be to protect the freedoms safeguarded by the Bill of Rights, it is difficult to see in such enactments a

[1] Case 1A-R-009 on this website.
[2] Case 1A-R-010 on this website.
[3] Case 1A-R-011 on this website.

shadow of prohibition of the exercise of religion or of abridgement of the freedom of speech or the press. It is prohibition and unjustifiable abridgement which is interdicted, not taxation. Nor do we believe it can be fairly said that because such proper charges may be expanded into unjustifiable abridgements they are therefore invalid on their face. The freedoms claimed by those seeking relief here are guaranteed against abridgement by the Fourteenth Amendment. Its commands protect their rights. The legislative power of municipalities must yield when abridgement is shown. **If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented. These are not taxes on free will offerings. But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid.** A tax on religion or a tax on interstate commerce may alike be forbidden by the Constitution. It does not follow that licenses for selling Bibles or for manufacture of articles of general use, measured by extrastate sales, must fall. It may well be that the wisdom of American communities will persuade them to permit the poor and weak to draw support from the petty sales of religious books without contributing anything for the privilege of using the streets and conveniences of the municipality. Such an exemption, however, would be a voluntary, not a constitutionally enforced, contribution.

In the ordinances of Casa Grande and Fort Smith, we have no discretionary power in the public authorities to refuse a license to any one desirous of selling religious literature. No censorship of the material which enters into the books or papers is authorized. No religious symbolism is involved such as was urged against the flag salute in Minersville District v. Gobitis.[4] For us there is no occasion to apply here the principles taught by that opinion. Nothing more is asked from one group than from another which uses similar methods of propagation. We see nothing in the collection of a nondiscriminatory license fee, uncontested in amount, from those selling books or papers, which abridges the freedoms of worship, speech or press. As to the claim that even small license charges, if valid, will impose upon the itinerant colporteur a crushing aggregate, it is plain that if each single fee is, as we assume, commensurate with the activities licensed, then though the accumulation of fees from city to city may in time bulk large, he will have enjoyed a correlatively enlarged field of distribution. The First Amendment does not require a subsidy in the form of fiscal exemption. Accordingly the challenges to the Fort Smith and Casa grande ordinances fail.

There is an additional contention by petitioner as to the Opelika ordinance. It is urged that since the licenses were revocable, arbitrarily, by the local authorities, there can be no true freedom for petitioners in the dissemination of information because of the censorship upon their actions after the issuance of the license. But there has been neither application for nor revocation of a license. The complaint was bottomed on sales without a license. It was that charge against which petitioner claimed the protection of the Constitution. This issue he had standing to raise. From what has been said previously it follows that the objection to the unconstitutionality of requiring a license fails. There is no occasion, at this time, to pass on the validity of the revocation section, as it does not affect his present defense.

[4] Case 1A-S-6 on this website.

In Lovell v. Griffin, we held invalid a statute which placed the grant of a license within the discretion of the licensing authority. By this discretion, the right to obtain a license was made an empty right. Therefore the formality of going through an application was naturally not deemed a prerequisite to insistence on a constitutional right. Here we have a very different situation. A license is required that may properly be required. The fact that such a license, if it were granted, may subsequently be revoked does not necessarily destroy the licensing ordinance. The hazard of such revocation is much too contingent for us now to declare the licensing provisions to be invalid. Lovell v. Griffin has, in effect, held that discretionary control in the general area of free speech is unconstitutional. Therefore, the hazard that the license properly granted would be improperly revoked is far too slight to justify declaring the valid part of the ordinance, which is alone now at issue, also unconstitutional.

[All convictions are affirmed.]

The dissents are important because, eventually, they won out.

DISSENT: STONE/BLACK/DOUGLAS/MURPHY...The First Amendment, which the Fourteenth makes applicable to the states, declares: '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'. **I think that the ordinance in each of these cases is on its face a prohibited invasion of the freedoms thus guaranteed, and that the judgment in each should be reversed.**

The ordinance in the Opelika case should be held invalid on two independent grounds. One is that the annual tax in addition to the 50 cent 'issuance fee' which the ordinance imposes is an unconstitutional restriction on those freedoms, for reasons which will presently appear. The other is that the requirement of a license for dissemination of ideas, when as here the license is revocable at will without cause and in the unrestrained discretion of administrative officers, is likewise an unconstitutional restraint on those freedoms.

The sole condition which the Opelika ordinance prescribes for grant of the license is payment of the designated annual tax and issuance fee. The privilege thus purchased, for the period of a year, is forthwith revocable in the unrestrained and unreviewable discretion of the licensing commission without cause and without notice or opportunity for a hearing. The case presents in its baldest form the question whether the freedoms which the Constitution purports to safeguard can be completely subjected to uncontrolled administrative action. Only recently this Court was unanimous in holding void on its face the requirement of a license for the distribution of pamphlets which was to be issued in the sole discretion of a municipal officer. Lovell v. Griffin. The precise ground of our decision was that the ordinance made enjoyment of the freedom which the Constitution guarantees contingent upon the uncontrolled will of administrative officers. We declared:

> '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.' 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.'

That purpose cannot rightly be defeated by so transparent a subterfuge as the pronouncement that, while a license may not be required if its award is contingent upon the whim of an administrative officer, it may be if its retention and the enjoyment of the privilege which it purports to give is wholly contingent upon his whim. In either case enjoyment of the freedom is dependent upon the same contingency and the censorship is as effective in one as in the other. Nor is any palliative afforded by the assertion that the defendant's failure to apply for a license deprives him of standing to challenge the ordinance because of its revocation provision, by the terms of which retention of the license and exercise of the privilege may be cut off at any time without cause.

Indeed, the present ordinance is a more callous disregard of the constitutional right than that exhibited in Lovell v. Griffin. There at least the defendant might have been given a license if he had applied for it. In any event he would not have been compelled to pay a money exaction for a license to exercise the privilege of free speech—a license which if granted in this case would have been wholly illusory. Here the defendant Jones was prohibited from distributing his pamphlets at all unless he paid in advance a year's tax for the exercise of the privilege and subjected himself to termination of the license without cause, notice or hearing, at the will of city officials. To say that he who is free to withhold at will the privilege of publication exercises a power of censorship prohibited by the Constitution, but that he who has unrestricted power to withdraw the privilege does not, would be to ignore history and deny the teachings of experience, as well as to perpetuate the evils at which the First Amendment was aimed.

It is of no significance that the defendant did not apply for a license. As this Court has often pointed out, when a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application for the license. But here it is the prohibition of publication, save at the uncontrolled will of public officials, which transgresses constitutional limitations and makes the ordinance void on its face. The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands. The question of standing to raise the issue in this case is indistinguishable from that in the Lovell case, where it was resolved in the only manner consistent with the First Amendment...

In all three cases the question presented by the record and fully argued here and below is whether the ordinances—which as applied penalize the defendants for not having paid the flat fee taxes levied—violate the freedom of speech, press, and religion guaranteed by the First and Fourteenth Amendments...

This Court has often had occasion to point out that where the state may, as a regulatory measure, license activities which it is without constitutional authority to tax, it may charge a small or nominal fee sufficient to defray the expense of licensing, and similarly it may charge a reasonable fee for the use of its highways by interstate motor traffic which it

cannot tax. But we are not concerned in these cases with a nominal fee for a regulatory license, which may be assumed for argument's sake to be valid. Here the licenses are not regulatory, save as the licenses conditioned upon payment of the tax may serve to restrain or suppress publication. None of the ordinances, if complied with, purports to or could control the time, place or manner of the distribution of the books and pamphlets concerned. None has any discernible relationship to the police protection or the good order of the community. The only condition and purpose of the licenses under all three ordinances is suppression of the specified distributions of literature in default of the payment of a substantial tax fixed in amount and measured neither by the extent of the defendants' activities under the license nor the amounts which they receive for and devote to religious purposes in the exercise of the licensed privilege...

In considering the effect of such a tax on the defendants' activities it is important to note that the state courts have applied levies obviously devised for the taxation of business employments—in the first case the 'business or vocation' of 'book agent'; in the second the business of peddling specified types of merchandise or 'other articles'; in the third, the practice of the callings of 'peddlers, transient merchants and venders'—to activities which concededly are not ordinary business or commercial transactions. As appears by stipulation or undisputed testimony, **the defendants are Jehovah's Witnesses, engaged in spreading their religious doctrines in conformity to the teachings of St. Matthew, Matt. 10:11-14 and 24:14, by going from city to city, from village to village, and house to house, to proclaim them.** After asking and receiving permission from the householder, they play to him phonograph records and tender to him books or pamphlets advocating their religious views. For the latter they ask payment of a nominal amount, two to five cents for the pamphlets and twenty-five cents for books, as a contribution to the religious cause which they seek to advance. But they distribute the pamphlets, and sometimes the books, gratis when the householder is unwilling or unable to pay for them. The literature is published for such distribution by non-profit charitable corporations organized by Jehovah's Witnesses. The funds collected are used for the support of the religious movement and no one derives a profit from the publication and distribution of the literature. In the Opelika case the defendant's activities were confined to distribution of literature and solicitation of funds in the public streets.

No one could doubt that taxation which may be freely laid upon activities not within the protection of the Bill of Rights could—when applied to the dissemination of ideas—be made the ready instrument for destruction of that right. Few would deny that a license tax laid specifically on the privilege of disseminating ideas would infringe the right of free speech. For one reason among others, if the state may tax the privilege it may fix the rate of tax and, through the tax, control or suppress the activity which it taxes. If the distribution of the literature had been carried on by the defendants without solicitation of funds, there plainly would have been no basis, either statutory or constitutional, for levying the tax. It is the collection of funds which has been seized upon to justify the extension, to the defendants' activities, of the tax laid upon business callings. But if we assume, despite our recent decision in Schneider v. State, that the essential character of these activities is in some measure altered by the collection of funds for the support of a religious undertaking, still it seems plain that the operation of the present flat tax is such as to abridge the privileges which the defendants here invoke.

It lends no support to the present tax to insist that its restraint on free speech and religion is non-discriminatory because the same levy is made upon business callings carried on for profit, many of which involve no question of freedom of speech and religion and all of which involve commercial elements—lacking here—which for present purposes may be assumed to afford a basis for taxation apart from the exercise of freedom of speech and religion. The constitutional protection of the Bill of Rights is not to be evaded by classifying with business callings an activity whose sole purpose is the dissemination of ideas, and taxing it as business callings are taxed. The immunity which press and religion enjoy may sometimes be lost when they are united with other activities not immune. But here the only activities involved are the dissemination of ideas, educational and religious, and the collection of funds for the propagation of those ideas, which we have said is likewise the subject of constitutional protection. Schneider v. State; Cantwell v. Connecticut.

The First Amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary the Constitution, by virtue of the First and the Fourteenth Amendments, has put those freedoms in a preferred position. Their commands are not restricted to cases where the protected privilege is sought out for attack. They extend at least to every form of taxation which, because it is a condition of the exercise of the privilege, is capable of being used to control or suppress it...

The First Amendment prohibits all laws abridging freedom of press and religion, not merely some laws or all except tax laws. It is true that the constitutional guaranties of freedom of press and religion, like the commerce clause, make no distinction between fixed-sum taxes and other kinds. But that fact affords no excuse to courts, whose duty it is to enforce those guaranties, to close their eyes to the characteristics of a tax which render it destructive of freedom of press and religion...

DISSENT: MURPHY/STONE/BLACK/DOUGLAS...**When a statute is challenged as impinging on freedom of speech, freedom of the press, or freedom of worship, those historic privileges which are so essential to our political welfare and spiritual progress, it is the duty of this Court to subject such legislation to examination, in the light of the evidence adduced, to determine whether it is so drawn as not to impair the substance of those cherished freedoms in reaching its objective. Ordinances that may operate to restrict the circulation or dissemination of ideas on religious or other subjects should be framed with fastidious care and precise language to avoid undue encroachment on these fundamental liberties. And the protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs. Being satisfied by the evidence that the ordinances in the cases now before us, as construed and applied in the state courts, impose a burden on the circulation and discussion of opinion and information in matters of religion, and therefore violate the petitioners' rights to freedom of speech, freedom of the press, and freedom of worship in contravention of the Fourteenth Amendment, I am obliged to dissent from the opinion of the Court...**

In [the Jones case], the trial court excluded as irrelevant petitioner's testimony that he was an ordained minister and that his activities on the streets of Opelika were in furtherance of his

ministerial duties. The testimony of ten clergymen of Opelika that they distributed free religious literature in their churches, the cost of which was defrayed by voluntary contribution, and that they had never been forced to pay any license fee, was also excluded. It is admitted here that petitioner was a Jehovah's Witness and considered himself an ordained minister.

The Supreme Court of Arizona stated in [that case] that appellant was 'a regularly ordained minister of the denomination commonly known as Jehovah's Witnesses * * * going from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he then left a small leaflet summarizing some of the doctrines which he preached.'

The facts were stipulated in [the Arkansas case]. Each petitioner 'claims to be an ordained minister of the gospel * * *. 'They do not engage in this work for any selfish reason, but because they feel called to publish the news and preach the gospel of the Kingdom to all the world as a witness before the end comes. * * * They believe that the only effective way to preach is to go from house to house and make personal contact with the people and distribute to them books and pamphlets setting forth their views on Christianity". Petitioners 'were going from house to house in the residential section within the City of Fort Smith * * * presenting to the residents of these houses various booklets, leaflets and periodicals setting forth their views of Christianity held by Jehovah's Witnesses.' They solicited a 'contribution of twenty-five cents for each book,' but 'these books in some instances are distributed free when the people wishing them are unable to contribute.'

There is no suggestion in any of these three cases that petitioners were perpetrating a fraud, that they were demeaning themselves in an obnoxious manner, that their activities created any public disturbance or inconvenience, that private rights were contravened, or that the literature distributed was offensive to morals or created any 'clear and present danger' to organized society...

Freedom of Speech and Freedom of the Press.

In view of the recent decisions of this Court striking down acts which impair freedom of speech and freedom of the press no elaboration on that subject is now necessary. We have 'unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares.' Valentine v. Chrestensen[5]. And as the distribution of pamphlets to spread information and opinion on the streets and from house to house for non-commercial purposes is protected from the prior restraint of censorship (Lovell v. Griffin; Schneider v. State), so should it be protected from the burden of taxation...

[5] Case 1A-R-013 on this website.

Consideration of the taxes leads to but one conclusion—that they prohibit or seriously hinder the distribution of petitioners' religious literature...

Freedom of speech, freedom of the press, and freedom of religion all have a double aspect—freedom of thought and freedom of action. Freedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind. But even an aggressive mind is of no missionary value unless there is freedom of action, freedom to communicate its message to others by speech and writing. Since in any form of action there is a possibility of collision with the rights of others, there can be no doubt that this freedom to act is not absolute but qualified, being subject to regulation in the public interest which does not unduly infringe the right. However, there is no assertion here that the ordinances were regulatory, but if there were such a claim, they still should not be sustained. No abuses justifying regulation are advanced and the ordinances are not narrowly and precisely drawn to deal with actual, or even hypothetical evils, while at the same time preserving the substance of the right. Thornhill v. Alabama[6]; Cantwell v. Connecticut. They impose a tax on the dissemination of information and opinion anywhere within the city limits, whether on the streets or from house to house. 'As we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised elsewhere.' Schneider v. State. These taxes abridge that liberty.

It matters not that petitioners asked contributions for their literature. Freedom of speech and freedom of the press cannot and must not mean freedom only for those who can distribute their broadsides without charge. There may be others with messages more vital but purses less full, who must seek some reimbursement for their outlay or else forego passing on their ideas. The pamphlet, an historic weapon against oppression, is today the convenient vehicle of those with limited resources because newspaper space and radio time are expensive and the cost of establishing such enterprises great. If freedom of speech and freedom of the press are to have any concrete meaning, people seeking to distribute information and opinion, to the end only that others shall have the benefit thereof, should not be taxed for circulating such matter...

Freedom of Religion.

Under the foregoing discussion of freedom of speech and freedom of the press any person would be exempt from taxation upon the act of distributing information or opinion of any kind, whether political, scientific, or religious in character, when done solely in an effort to spread knowledge and ideas, with no thought of commercial gain. But there is another, and perhaps more precious reason why these ordinances cannot constitutionally apply to petitioners. Important as free speech and a free press are to a free government and a free citizenry, there is a right even more dear to many individuals—the right to worship their Maker according to their needs and the dictates of their souls and to carry their message or their gospel to every living creature. These ordinances infringe that right, which is also protected by the Fourteenth Amendment.

[6] Case 1A-S-6a on this website.

Petitioners were itinerant ministers going through the streets and from house to house in different communities, preaching the gospel by distributing booklets and pamphlets setting forth their views of the Bible and the tenets of their faith. While perhaps not so orthodox as the oral sermon, the use of religious books is an old, recognized and effective mode of worship and means of proselytizing. For this petitioners were taxed. The mind rebels at the thought that a minister of any of the old established churches could be made to pay fees to the community before entering the pulpit. These taxes on petitioners' efforts to preach the 'news of the Kingdom' should be struck down because they burden petitioners' right to worship the Deity in their own fashion and to spread the gospel as they understand it. There is here no contention that their manner of worship gives rise to conduct which calls for regulation, and these ordinances are not aimed at any such practices.

One need only read the decisions of this and other courts in the past few years to see the unpopularity of Jehovah's Witnesses and the difficulties put in their path because of their religious beliefs. An arresting parallel exists between the troubles of Jehovah's Witnesses and the struggles of various dissentient groups in the American colonies for religious liberty which culminated in the Virginia Statute for Religious Freedom, the Northwest Ordinance of 1787, and the First Amendment. In most of the colonies there was an established church, and the way of the dissenter was hard. All sects, including Quaker, Methodist, Baptist, Episcopalian, Separatist, Rogerine, and Catholic suffered. Many of the non-conforming ministers were itinerants, and measures were adopted to curb their unwanted activities. The books of certain denominations were banned. Virginia and Connecticut had burdensome licensing requirements. Other states required oaths before one could preach which many ministers could not conscientiously take. Research reveals no attempt to control or persecute by the more subtle means of taxing the function of preaching, or even any attempt to tap it as a source of revenue.

By applying these occupational taxes to petitioners' non-commercial activities, respondents now tax sincere efforts to spread religious beliefs, and a heavy burden falls upon a new set of itinerant zealots, the Witnesses. That burden should not be allowed to stand, especially if, as the excluded testimony in [Jones] indicates, the accepted clergymen of the town can take to their pulpits and distribute their literature without the impact of taxation. **Liberty of conscience is too full of meaning for the individuals in this nation to permit taxation to prohibit or substantially impair the spread of religious ideas, even though they are controversial and run counter to the established notions of a community. If this Court is to err in evaluating claims that freedom of speech, freedom of the press, and freedom of religion have been invaded, far better that it err in being overprotective of these precious rights.**

DISSENT: BLACK/DOUGLAS/MURPHY...The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which Minersville School District v. Gobitis took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the Gobitis case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided. Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise

religion in a subordinate position. We fear, however, that the opinions in these and in the Gobitis case do exactly that.