

RIGHT TO DISTRIBUTE LITERATURE IS GUARANTEED BY THE US CONSTITUTION

THE UNITED STATES 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 government executives, legislators, policemen, and judges are required to abide by it.

Our Constitution states: "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 US 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 other 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, according to *Flower v. U.S.* 407 US 197 (1972).

The Supreme Court has also found that door-to-door solicitations for the purpose of distributing information may not be banned

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regardless of the wishes of the householder to receive such information in this manner, according to *Martin v. Struthers* 319 US 141 (1943). Furthermore, a state or municipality may not tax or require any license for the distribution or sale of political or religious material door-to-door, as stated in *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; see *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, as we see in *Lloyd Corp. V. Tanner* 407 US 551 (1972). As yet, there has been no case dealing specifically with the question of leafleting in the parking lot of a shopping center, but a leading legal treatise on the First Amendment says this on the subject: "The First Amendment interest should not be defeated because the property owner either 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