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# Heffron v. International Society for Krishna Consciousness, Inc.: Reasonable Time, Place and Manner Restrictions, 15 J. Marshall L. Rev. 543 (1982)

Robert Corvino

# *HEFFRON v. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS, INC.**: REASONABLE TIME, PLACE AND MANNER RESTRICTIONS

The first amendment[1] guarantees each individual the right to express and conduct himself with immunity from legal censure. These rights, however, "still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."[2] It has long been held that conduct, even conduct dictated by religious belief, is subject to some government regulation.[3] Constitutional regulations of conduct are those which generally restrict only the time, place or manner of first amendment activities.[4] In *Heffron v. International Society for Krishna Consciousness, Inc.*,[5] the Supreme Court of the United States addressed the issue of whether a state regulation confining protected first amendment activities

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* 452 U.S. 640 (1981).

1. The first amendment provides that no law shall be made "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 redress of grievances." U.S. Const. amend. I. This provision is made applicable to the states through the fourteenth amendment. U.S. CONST. amends. II, XIV.

2. Cox v. Louisiana, 379 U.S. 536, 554 (1965).

3. The state may require that conduct conform to the moral code of the community. Prince v. Massachusetts, 321 U.S. 158 (1944) (state may prohibit minor from selling religious literature on streets); Reynolds v. United States, 98 U.S. 145 (1878) (a state may enforce laws prohibiting religiously dictated polygamy). Likewise, a state may regulate conduct to preserve order. Cox v. New Hampshire, 312 U.S. 569, 574 (1941) (state can impose regulations "to assure the safety and convenience of the people"). A state may also regulate conduct which is harmful to individuals or to society as a whole. State v. Bullard, 267 N.C. 599, 148 S.E.2d 565 (1967), *cert. denied*, 386 U.S. 917 (free exercise rights not violated by forbidding religious members use of peyote and marijuana).

4. This test was applied in Poulos v. New Hampshire, 345 U.S. 395 (1941). The Court upheld a municipal statute which required parade permits. The ordinance was upheld because it only placed a narrow limit upon the time, place and manner of first amendment activities. *See* Grayned v. City of Rockford, 408 U.S. 104 (1972) (upholding validity of ordinance which only banned noisy demonstrations near schools while classes were in session); Kovacs v. Cooper, 336 U.S. 77 (1949) (upholding a limit on the use of loud sound trucks on public streets); Cantwell v. Connecticut, 310 U.S. 296 (1940) (a state constitutionally may regulate the time, place and manner of soliciting upon streets).

5. 452 U.S. 640 (1981).

to a fixed area within a state fairground is constitutional. The Court held that a rule requiring that the sale of goods, distribution of literature and solicitation of contributions[6] be from a fixed location, is a reasonable time, place and manner restriction of first amendmet activity.[7]

The International Society for Krishna Consciousness (ISKON) is a non-profit religious organization. ISKON members engage in a religious ritual called "Sankirtan,"[8] which requires the members to go out into public places[9] to proselytize, solicit donations and distribute the Society's religious publications. The ISKON members claim that they should be permitted to perform Sankirtan throughout the open areas of the Minnesota State Fairgrounds.

The Minnesota State Fair is held each year for a twelve-day period in an enclosed 125 acre state fairground permanently located in St. Paul, Minnesota.[10] The Fair annually attracts 1,320,000 visitors, with an average daily attendance of 115,000.[11] Because of the large crowds attending the Fair, the Minnesota State Fair Society is given authority[12] to enact rules which are necessary and proper to protect the health, safety and comfort

6. Proselytism, distribution of religious literature, sale of religious literature, and solicitation of donations are activities protected by the first amendment. *See, e.g.*, Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 632 (1980) (solicitation "involve[s] a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment"); Murdock v. Pennsylvania, 319 U.S. 105, 108-09 (1943) (sale and distribution of religious literature is "an age-old form of missionary evangelism . . . occup[ying] the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits").

7. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640 (1981).

8. The practice of Sankirtan has three principal objectives: spreading religious "truth" through sales and distribution of literature and other materials, seeking converts, and soliciting money. United States v. Silberman, 464 F. Supp. 866, 870 (M.D. Fla. 1979). For background on Sankirtan, *see generally*, PRABHUPADA, PREACHING AS THE ESSENCE (1977).

9. The Minnesota Supreme Court interpreted "going out into public places" as meaning peripatetic conduct. International Soc'y for Kirshna Consciousness, Inc. v. Heffron, 299 N.W.2d 79, 83 n.7 (Minn. 1980).

10. This permanent facility is comprised chiefly of permanent buildings, temporary structures, a race track, carnival rides, and parking lots. Approximately one-third of the total fairground acreage constitutes the area generally occupied by the persons who attend, participate in and work at the fair. Brief for Petitioner at 4, Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640 (1981). The fair is authorized under MINN. STAT. § 37.15 (1980).

11. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 643 (1981).

12. MINN. STAT. § 37.16 (1980).

of the fairgoers.[13]

At issue in this case is the constitutionality of Rule 6.05 of the Rules and Regulations of the Minnesota State Fair.[14] This Rule requires that the sale of any written material, the solicitation of money and the distribution of all materials take place only at a rented booth. ISKON filed suit against numerous state officials, seeking a declaration that Rule 6.05 violated their rights under the first amendment, and an injunction prohibiting the enforcement of Rule 6.05 against ISKON and its members.[15] The trial court upheld the constitutionality of Rule 6.05.[16] The Minnesota Supreme Court reversed;[17] although it recognized a valid state interest in maintaining crowd control, the court held that the state's interest can adequately be served by means less restrictive of first amendment rights.[18]

On certiorari to the United States Supreme Court, the state court decision was reversed.[19] Writing for the majority, Justice White, recognizing that activities protected by the first amendment may be subject to "reasonable time, place and manner restrictions,"[20] identified the criteria necessary to find that a regulation imposes a constitutional time, place and manner restriction.

The first criterion was that the restriction "may not be based upon either the content or subject matter of the speech."[21] The Court noted that Rule 6.05 applies equally to all persons or groups who wish to sell or exhibit products, solicit contributions

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13. The Society is authorized to make:

> "all bylaws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of the fair grounds and all fairs to be held thereon, and for the protection, health, safety, and comfort of the public thereon . . . . [T]he violation of a bylaw, rule, or ordinance promulgated by the society is a misdemeanor".

MINN. STAT. § 37.16 (1980).

14. Rule 6.05 of the Minnesota State Fair provides: "Sale or distribution of any merchandise, including printed or written material except under license issued [by] the Society [State fair] and/or from a duly licensed location shall be a misdemeanor."

15. International Soc'y for Krishna Consciousness, Inc. v. Heffron, 299 N.W.2d 79, 82 (Minn. 1980).

16. *Id.* at 82 n.4.

17. International Soc'y for Krishna Consciousness, Inc. v. Heffron, 299 N.W.2d 79 (Minn. 1980).

18. *Id.* at 84.

19. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640 (1981).

20. *Id.* at 647 (citing Grayned v. City of Rockford, 408 U.S. 104 (1972); Adderley v. Florida, 385 U.S. 39 (1966); Kovacs v. Cooper, 336 U.S. 77 (1949); Cox v. New Hampshire, 312 U.S. 569 (1941)). *See supra* note 4.

21. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 643 (1981) (quoting Consolidated Edison Co. v. Public Serv. Comm'n, 447 U.S. 530, 536 (1980)).

or distribute written materials.[22] Since the method of renting booths at the Fair under Rule 6.05 is on a straightforward, first-come, first-served basis,[23] the Rule does not permit any state official discretion in granting or denying applications for space.

The second criterion the Court considered was whether the restriction "serve[d] a significant governmental interest."[24] The principal state interest asserted was the need to maintain the safe and orderly movement of the crowd at the Fair. The Court recognized this as a valid governmental interest of the state.[25] In rejecting the Minnesota Supreme Court's view that the state's interest is insufficient to justify a restriction upon ISKON's first amendment rights, Justice White emphasized that the justification for the Rule should not be measured by the disorder that would result from granting an exemption solely to ISKON. Rather, the justification for the rule should be measured by the disorder which occurs if no group were required to rent a booth.[26]

As to the third criterion, that there be no less restrictive means available to achieve the state objective, the majority rejected the Minnesota Supreme Court's view that the threat posed to the state's interest in crowd control could be avoided by less restrictive means.[27] The majority again directed its inquiry not only to the disorder that would be caused solely by ISKON members but to the disorder that could result if all organizations were exempted from the Rule. Justice White argued that it is "quite improbable that alternative means . . . would deal adequately with the problems posed by the much larger

22. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 649 (1981).

23. *Id.*

24. *Id.* at 649 (quoting Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976)). *See* Grayned v. City of Rockford, 408 U.S. 104 (1972).

25. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 650 (1981). The state also asserted two other interests as justifications for the Rule: the state's interest in protecting fairgoers from fraudulent solicitations; and the state's interest in protecting the fairgoers' privacy rights. Since the Court found that the state's interest in maintaining order in the fairgrounds was sufficient to justify Rule 6.05 it did not rule on whether these interests were also constitutionally sufficient. *Id.* at 650, n.13. *See infra* note 47.

26. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 653 (1981). There are approximately 1400 organizations, exhibitors and concessionaires who rent booth space at the fair. There are at least forty organizations of a religious, political, journalistic and charitable nature which could potentially be effected by a decision invalidating Rule 6.05.

27. *Id.* at 654. The Minnesota Supreme Court concluded that less restrictive means, such as penalizing disorder or limiting the number of solicitors would be more appropriate. International Soc'y for Krishna Consciousness, Inc. v. Heffron, 299 N.W.2d 79, 84 (Minn. 1980).

number of distributors and solicitors that would be present on the fairgrounds"[28] if Rule 6.05 were to be invalidated. The majority finally asserted that there were sufficiently clear alternative forums for the expression of ISKON's protected speech, despite the effects of Rule 6.05.[29]

Justice Brennan wrote a separate opinion, concurring in part and dissenting in part. Brennan thought the majority erred in failing to apply its analysis separately to the three types of first amendment activities restricted by Rule 6.05: distribution of literature, solicitation of funds and sale of literature.[30] Brennan would uphold Rule 6.05 as it applied to solicitation and sales activity[31] but invalidate the Rule as it applied to the distribution of literature. In finding Rule 6.05 unconstitutional as applied to the distribution of literature, Justice Brennan stated that the "state could have drafted a more narrowly-drawn restriction . . . without undermining its interest in maintaining crowd control on the fairgrounds."[32] Justice Blackmun wrote a separate opinion concurring with Brennan, adding that the distribution of literature "may present even fewer crowd control problems than the oral proselytizing that the State already allows upon the fairgrounds."[33]

Analysis of any case involving a restriction upon conduct protected by the first amendment must begin by realizing that such conduct, even though it is protected by the first amendment, still may be subject to some type of government regulation.[34] Regulations of conduct which most often survive a constitutional challenge are those which restrict only the time, place or manner of first amendment activity.[35] A regulation which restricts the time, place or manner of first amendment activities may be imposed subject to a test of reasonableness. A

28. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 653-54 (1981).

29. *Id.* The Court noted that Rule 6.05 did not prohibit ISKON from practicing Sankirtan outside the fairgrounds nor did it deny ISKON members access to the fairgrounds. The Rule also did not deny any organization the right to conduct first amendment activities at some point within the fairgrounds. An organization can rent a booth and distribute and sell literature and solicit funds from that location.

30. *Id.*

31. *Id.* at 657. Justice Brennan does not agree with the majority's conclusion that the state's interest in maintaining order in the fairgrounds is sufficient to justify Rule 6.05. Justice Brennan concludes that the state's interest in preventing fraud is sufficient to justify Rule 6.05 as it applies to sales and solicitation.

32. *Id.* at 663.

33. *Id.* at 665.

34. *See supra* note 3.

35. *See supra* note 4.

reasonable limitation is one which is non-content oriented,[36] serves a significant governmental interest,[37] and is the least restrictive means available to achieve that significant governmental interest.[38]

With respect to the limitation that the regulation must be non-content oriented, courts have struck down statutes where the primary objective is the prohibition of particular statements.[39] A state cannot enact a statute for the purpose of limit-

36. When a law that regulates first amendment activity bases its regulation on the subject matter, it "slips from the neutrality of time, place and circumstances into a concern about content." Kalven, *The Concept of a Public Form: Cox v. Louisiana*, 1965 SUP. CT. REV. 1, 29. *See also* Stone, *Restrictions of Speech Because of its Content: The Peculiar Case of Subject-Matter Restrictions*, 46 U. CHI. L. REV. 81 (1978).

37. *See, e.g.*, Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976) (state must show "substantial" interest to justify regulation); Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) (state interest must be compelling); Grayned v. City of Rockford, 408 U.S. 104, 115 (1972) (regulation must further a "significant" governmental interest); United States v. O'Brien, 391 U.S. 367, 376-77 (1968) (regulation must further an "important" governmental interest).

38. The availability of "less restrictive means" signifies that a governmental regulation has inhibited expression, belief, or association more than the Constitution allows. When a state has available a variety of equally effective means to a given end, it must choose the measure which least interferes with first amendment activities. For a summary of first amendment cases using the "least restrictive means" doctrine, *see* Wormuth & Mirkin, *The Doctrine of the Reasonable Alternative*, 9 UTAH L. REV. 254, 267-93 (1964). *See generally*, Note, *Less Drastic Means and the First Amendment*, 78 YALE L. J. 464 (1969).

39. *See, e.g.*, Consolidated Edison Co. v. Public Serv. Comm'n, 447 U.S. 530 (1980) (rule unconstitutional which prohibits the inclusion by a power company in its monthly bills inserts discussing controversial issues of public policy); Linmark Assocs., Inc. v. Township of Willingboro, 431 U.S. 85 (1977) (ordinance unconstitutional prohibiting the posting of real estate "For Sale" signs); Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748 (1976) (invalidating an ordinance which singles out speech of a particular content); Police Department of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972) (ordinance prohibiting picketing except for labor unions held invalid because it is not content neutral).

Nevertheless, governmental regulations based on subject matter have been approved in narrow circumstances. In Greer v. Spock, 424 U.S. 828 (1976), the Supreme Court held that the Federal Government could prohibit partisan political speech on a military base even though civilian speakers had been allowed to lecture on other subjects. The necessity for excluding partisan speech was based upon the policy of "keeping official military activities . . . wholly free of entanglement with partisan political campaigns of any kind." *Id.* at 839. In Lehman v. City of Shaker Heights, 418 U.S. 298 (1974), the Court similarly concluded that a city transit system that rented space in its busses for commercial advertising did not have to accept partisan political advertising. The city's refusal to accept political advertising was based upon fears that partisan advertisements might jeopardize long-term commercial revenue, that commuters would be subjected to political propaganda, and that acceptance of particular political advertisements might lead to charges of favoritism. *Id.* at 302-04. These two cases are viewed as narrow exceptions to the general prohibition against subject mat-

ing information or suppressing a particular viewpoint.[40] As the majority correctly concluded, Rule 6.05 is not subject to attack on the grounds that it is content oriented.[41] The rule does not distingush among applicants based on the content of their literature nor does it restrict the content of any literature sold from a booth.

Courts have also struck down statutes which give state officials unlimited discretion in granting or denying permits for access to public places.[42] Regulations which give state officials such discretion have the potential for becoming a means of limiting information or of suppressing a particular point of view.[43] Rule 6.05 is applied on a straightforward, first-come, first-served basis. Therefore, as Justice White noted, the Rule does not give state officials unconstitutional discretion to grant or deny space selectively.[44]

The second limitation is that a reasonable time, place or manner restriction must serve a significant governmental interest.[45] Once the state has shown that a regulation furthers a significant govenmental interest, such as the preservation of order

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ter regulations. Consolidated Edison Co. v. Public Serv. Comm'n, 447 U.S. 530, 539 (1980).

40. *See* Consolidated Edison Co. v. Public Serv. Comm'n, 447 U.S. 530 (1980) "The First Amendment's hostility to content-based regulations extends . . . to restrictions on particular viewpoints . . . . If the marketplace of ideas is to remain free and open, governments must not be allowed to choose which issues are worth discussing or debating." *Id.* at 537.

41. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640 (1981).

42. "[A]n ordinance which . . . makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official—as by requiring a permit or license which may be granted or withheld in the discretion of such official—is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms."

Shuttlesworth v. City of Birmingham, 394 U.S. 147, 151 (1969), *quoting* Staub v. City of Baxley, 355 U.S. 313, 322 (1958). It is well-settled that a law subjecting the right of free expression in public places to the prior restraint of a license must be narrow, objective and provide definite standards for the granting of a permit. *Id. See, e.g.*, Kunz v. New York, 340 U.S. 290 (1951) (permit for religious meeting); Saia v. New York, 334 U.S. 558 (1948) (permit to operate sound truck); Cantwell v. Connecticut, 310 U.S. 296 (1940) (permit to solicit for charitable causes); Lovell v. City of Griffin, 303 U.S. 444 (1938) (permit to distribute literature).

43. The regulation must provide definite standards to ensure that access to a public forum has not been denied "merely because public officials disapprove of the speaker's views." Niemotko v. Maryland, 340 U.S. 268, 282 (1951) (Frankfurter, J., concurring).

44. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 649 (1981).

45. *See* Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771 (1976); Lehman v. City of Shaker Heights, 418 U.S. 298, 303 (1974); Grayned v. City of Rockford, 408 U.S. 104, 115 (1972).

and safety,[46] that interest must be balanced against the harm suffered by those whose conduct is restricted.[47] Implicit in the balancing test is a consideration of the nature of the forum where the activity is restricted.

In his analysis Justice White categorized the fair as a "limited public forum,"[48] yet as one lower court points out,

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46. A municipality can require licensing and impose regulations "to assure the safety and convenience of the people in the use of public highways." Cox v. New Hamphsire, 312 U.S. 536, 574 (1941). *See, e.g.*, Grayned v. City of Rockford, 408 U.S. 104, 115 (1972); Adderley v. Florida, 385 U.S. 39, 47-48 (1966); Schneider v. State, 308 U.S. 147, 160 (1939); Lovell v. City of Griffin, 303 U.S. 444 (1938).

The state has asserted two other state interests to justify the regulation. *See supra* note 25. Whether these interests by themselves would be sufficient to hold a statute constitutional is unclear. Justice Brennan in his dissent would hold Rule 6.05 constitutional, based upon the state's interest in preventing fraud. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 657 (1981). *But see* Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980). "Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Id.* at 637.

The second justification for Rule 6.05 asserted by the state is that the Rule protects the fairgoers' privacy because they are members of a captive audience. *See* Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) (upholding constitutionality of a limitation on use of advertising space on city-owned business because commuters were a captive audience). Because fairgoers are capable of walking away from solicitors, they are not members of a captive audience. *See also* Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620, 638-39 (1980); Martin v. City of Struthers, 319 U.S. 141, 143-44 (1943).

47. In his concurring opinion in Niemotko v. Maryland, 340 U.S. 268 (1951), Justice Frankfurter suggested that four factors be considered by the Supreme Court in balancing competing governmental and first amendment interests. They are:

(1) What is the interest deemed to require the regulation of speech (or other first amendment activity)?;

(2) What is the method used to achieve such ends as a consequence of which public speech is constrained or barred?;

(3) What mode of speech is regulated?; and

(4) Where does the speaking which is regulated take place?

*Id.* at 282. Another factor the Supreme Court has considered is the degree to which a restriction falls unevenly upon a particular group. *See, e.g.*, Martin v. City of Struthers, 319 U.S. 141, 146 (1943) (prohibiton of door-to-door distribution of circulars falls unevenly upon the poor).

48. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 655 (1981). Public forums have received special protection from the courts. A municipality cannot regulate speech-related conduct in a public forum without showing a compelling governmental interest. Narrowly tailored restrictions of time, place or manner are required. *See* Cox v. Louisiana, 379 U.S. 536 (1965) (reversing conviction for obstructing a public passageway by assembling near a court house); Edwards v. South Carolina, 372 U.S. 229 (1963) (reversing breach of peace conviction of picketers on state capitol grounds); Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939) (invalidating ordinance which required that all public meetings in the streets and other public places have a permit); *see also*, Kalven, *The*

"[n]umerous public places far more enclosed and less open than fairgrounds [*e.g.*, bus and airport terminals], have been held to be first amendment forums where persons may circulate and engage in first amendment expression."[49] Public facilities in which the intercommunication of ideas is a primary purpose for which the facility is created have been held to be forums ripe for first amendment activity.[50] Fairgrounds exist as a place for the exchange of views among the members of the public.[51] If a school, which has a clearly defined purpose independent of personal intercommunication among students, constitutes a public forum for first amendment purposes,[52] then it would seem that a public fairground is at least equally available for the exercise of protected activity.[53]

The United States Supreme Court in *Grayned v. City of Rockford*[54] stated that "the nature of the place, 'the pattern of its normal activities, dictate the kinds of regulations of time, place and manner that are reasonable' . . . . The crucial question is whether the manner of expression is basically incompati-

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*Concept of the Public Forum: Cox v. Louisiana*, 1965 SUP. CT. REV. 1. "In an open democratic society the streets, the parks, and other public places are an important facility for public discussion and political process. They are in brief a public forum that the citizen can commandeer." *Id.* at 11-12. L. TRIBE, AMERICAN CONSTITUTIONAL LAW, §§ 12.21--12.22 at 688-700 (1978).

49. International Soc'y for Krishna Consciousness, Inc. v. Bowen, 456 F. Supp. 437, 442 (S.D. Ind. 1978), *aff'd*, 600 F.2d 667 (7th Cir.), *cert. denied*, 444 U.S. 963 (1979). *See* International Soc'y for Krishna Consciousness, Inc. v. Rochford, 585 F.2d 263, 272 (7th Cir. 1978) (airport's public non-leased areas are appropriate forums for first amendment activity); Wolin v. Port of New York Auth., 392 F.2d 83, 89 (2d Cir. 1968), *cert. denied*, 393 U.S. 940 (bus terminal concourse is a public forum which "resembles a street" and is "attended with noisy crowds and vehicles, some unrest and less than perfect order").

50. *See* Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 555 (1975) (municipal theaters are "public forums designed for and dedicated to expressive activities"); Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976) (governmental meeting house is a public forum because of its purpose as a place for the exchange of views among members of the public). *See also* L. TRIBE, AMERICAN CONSTITUTIONAL LAW, § 12.21 at 688-90 (1978).

51. As one author has concluded about the nature of fairgrounds, "they have constituted an important, if not the sole, point of vivid personal contact with the larger world. As such they have been and still are a source of general information and social intercourse, no less than a means of serving some more clearly defined end or ends." W. NEELY, THE AGRICULTURAL FAIR, 156 (1935). *See also* R. SPEER & H. FROST, MINNESOTA STATE FAIR: THE HISTORY AND HERITAGE OF 100 YEARS, 111 (1964) (the fair was a popular stopping place for presidential candidates).

52. Tinker v. Des Moines School Dist., 393 U.S. 503, 512, n.6 (1969) (public school's dedication to specific educational uses does not undercut first amendment protection).

53. International Soc'y for Krishna Consciousness, Inc. v. Evans, 440 F. Supp. 414, 422 (S.D. Ohio 1977).

54. 408 U.S. 104 (1972).

ble with the normal activity of a particular place at a particular time."[55] Applying *Grayned*, Justice White concludes that because of the nature of the fairgrounds, the need for crowd control is more pressing than it is in other traditional forums such as public streets.[56] In reaching this conclusion, the Court did not consider separately the three types of expressions which are restricted by the regulation, even though each activity has a different impact upon the normal activity of the fairgrounds. Thus, some of the restrictions constitute reasonable time, place and manner regulations, while others do not.

Sales and solicitation activities are basically incompatible with the normal activity of the open areas of the fairgrounds because they restrict the free flow and orderly movement of the crowd.[57] Sales and solicitation activities involve acts of exchanging articles for money, fumbling for and dropping money, and making change.[58] These activities serve to aggravate an already existing crowd control problem. Therefore, as applied to sales and solicitation activities, Rule 6.05 serves a significant governmental interest by preserving order and safety within the open areas of the fairgrounds.

Conversely, the distribution of literature is not incompatible with the normal activities of the fairgrounds. The distribution of literature has no greater impact on the orderly flow of the crowd than does the act of oral proselytism, which is allowed within the fairgrounds. The distribution of religious literature is a form of proselytism. It communicates religious beliefs by means of written words rather than oral communication.[59] In fact, the distribution of literature may take less time than oral proselytism. Thus, as the concurring opinion points out, "literature distribution may present even *fewer* crowd control problems than the

55. *Id.* at 116. *See* Stone, *Fora Americana: Speech In Public Places*, 1974 SUP. CT. REV. 233, 251-52.

56. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 651 (1981).

57. The crowd at the fairgrounds is concentrated into about one-third of the 125-acre fairground. Given the large number of fairgoers who annually attend the fair, there is confusion and congestion throughout the lanes of pedestrian traffic. International Soc'y for Krishna Consciousness, Inc. v. Heffron, 299 N.W.2d 79, 87 (Minn. 1980).

58. For a discussion of the disruption caused by sales and solicitation activities at a fairground, see International Soc'y for Krishna Consciousness, Inc. v. Eaves, 601 F.2d 809 (5th Cir. 1979).

59. Distribution of literature is "an age-old form of missionary evangelism—as old as the history of printing presses, . . . a potent force in various religious movements down through the years." Murdock v. Pennsylvania, 319 U.S. 105, 108 (1943) (footnotes omitted).

oral proselytizing that the state already allows."[60]

The third limitation is that a reasonable time, place and manner restriction be the least restrictive form of regulation which adequately protects the governmental interest at stake.[61] The majority in *Heffron* concluded that Rule 6.05 is the least restrictive means available to achieve the state's legitimate interest in maintaining the safe and orderly flow of the crowd.[62] Again, the Court reached this conclusion without separately analyzing the three different activities restricted by the Rule. The Court treated sales, solicitation and distribution as a single activity. As noted above, however, these activities affect the state's interest differently.[63] Sales and solicitation have a greater impact on the safe and orderly flow of the crowd at the fairgrounds than the distribution of literature. Thus, as Rule 6.05 applies to sales and solicitation activities, it is the least restrictive means to achieve a legitimate state interest in maintaining the safe and orderly flow of the crowd. When Rule 6.05 is applied to distribution of literature, a different result is reached since a less restrictive, more narrowly drawn regulation could have been drafted.

A state seeking to restrict first amendment activities must

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60. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 665 (1981) (emphasis added).

61. It has long been held that even a government regulation that is completely content-neutral, and serves a legitimate governmental interest which is totally unrelated to the suppression of speech, may be invalid if the governmental purpose can be achieved by less restrictive means.

The seminal case was Schneider v. State, 308 U.S. 147 (1939) (invalidating restrictions on door-to-door distribution of circulars, and bans on street distribution of circulars, where valid governmental purposes could be at least approximately achieved by less restrictive alternatives). *Accord* Teamsters Union v. Vogt, Inc., 354 U.S. 284, 295 (1957); Niemotko v. Maryland, 340 U.S. 268, 276-77 (1951) (Frankfurter, J., concurring); Follett v. Town of McCormick, 321 U.S. 573 (1944); Martin v. City of Struthers, 319 U.S. 141 (1943); Cantwell v. Connecticut, 310 U.S. 296, 308 (1940); Hague v. Committee for Indus. Organization, 307 U.S. 496, 515-16 (1939).

For a statute to be the least restrictive means to achieve a significant governmental interest, the government must show that sufficient alternative forums exist so that the restricted party will still be able to reach his audience. *See* Lloyd Corp. v. Tanner, 407 U.S. 551, 566-67 (1972) (validating regulation prohibiting handbilling in a privately-owned shopping center, primarily because surrounding public areas gave handbillers adequate alternative public forums for their messages). *But see* Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 757 n.15 (1976) (invalidating a statute banning the display of drug prices; the Court held it irrelevant that other means of obtaining the same information were available).

62. Heffron v. International Soc'y for Krishna Consciousness, Inc., 452 U.S. 640, 654 (1981).

63. *See supra* text accompanying notes 51-53.

do so by narrowly drawn regulations.[64] Broad, prophylactic rules which restrict first amendment activities are invalid.[65] As Rule 6.05 applies to distribution of literature, it is not narrowly drawn. Courts considering broad preclusive rules in similar circumstances have rejected state justifications based upon speculative and undifferentiated fears of disturbances.[66] The distribution of literature does not cause the crowd control problems inherent in sales or solicitation activities; Minnesota's Rule is based on a speculative fear of disorder. A valid state restriction should have prevented distribution from areas too close to entrances or exits, or specifically prohibited obstruction of the free passage of pedestrians, or limited the total number of distributors allowed to move about each day.[67] Because Rule 6.05 could have been more narrowly drawn as applied to the distributors of literature, the Court erred in not invalidating that portion of the Rule.

*Heffron* recognized that a state may reasonably regulate the time, place or manner of first amendment conduct within a fairground. The outcome of *Heffron* points the way to an acceptable balance of the rights of fairgoers with those of Krishna-type so-

64. The regulation must be narrowly drawn to achieve the government's interest while not imposing a heavy burden upon the individual. *Compare* Kovacs v. Cooper, 336 U.S. 77 (1949) (statute which limits the use of sound trucks on public streets is narrowly drawn) *and* Grayned v. City of Rockford, 408 U.S. 104, 116-17 (1972) (regulation against loud noise close to a school is narrowly drawn to further the state's interest in maintaining order) *with* Schneider v. State, 308 U.S. 147 (1939) (ban on door-to-door distribution and street distribution of circulars too broad to achieve the state's interest).

65. Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980). "[V]illage may serve its legitimate interests, but it must do so by narrowly drawn regulations designed to serve these interests without unnecessarily interfering with First Amendment freedoms." *Id.* at 837. *See* NAACP v. Button, 371 U.S. 415 (1963). "Broad prophylatic rules in the area of free expression are suspect. Precision of regulation must be the touchstone. . . ." *Id.* at 438.

66. Since distribution of literature does not pose the crowd control problems that solicitation and sales activities do, *see supra* notes 51-53 and accompanying text, the fear of disorder is speculative. *See* Tinker v. Des Moines School Dist., 393 U.S. 503 (1969). State sought to justify a restriction on the wearing of armbands at school because this activity may cause disorder. The court held the regulation invalid, stating, "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Id.* at 508. Lower courts have also found similar mere speculations insufficient. *See* Edwards v. Maryland State Fair & Agricultural Soc'y, 628 F.2d 282, 286 (4th Cir. 1980); International Soc'y for Krishna Consciousness, Inc. v. Colorado State Fair, 610 P.2d 486, 489 n.1 (Colo. 1980).

67. *See* Cameron v. Johnson, 390 U.S. 611, 616-17 (1968) (a statute which only prohibits picketing that interferes with the "free ingress or egress to and from" a courthouse is a "precise and narrowly drawn regulatory statute."). *See also* Jones, *Solicitations-Charitable and Religious*, 31 BAYLOR L. REV. 53, 57 (1979).

licitors and salesmen. The Court failed to recognize, however, that there are less restrictive means of regulating the distribution of literature. Thus, *Heffron* does not represent an acceptable balance of rights between fairgoers and the distributors of literature.

The decision in *Heffron* comes at a time when many state officials are trying to confine the activities of Krishna-type groups in such forums as airports, bus terminals, and railroad stations.[68] These forums are more limited and enclosed than fairgrounds. The need to protect the safe and orderly movement of the crowd may be more compelling in these forums than in fairgrounds. In light of the *Heffron* decision, state officials will be able to constitutionally restrict sales, solicitation and distribution activities to fixed areas within these forums.

*Robert Corvino*

68. *See, e.g.*, International Soc'y for Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981) (fairgrounds); Edwards v. Maryland State Fair and Agricultural Soc'y, 628 F.2d 282 (4th Cir. 1980) (fairgrounds); International Soc'y for Krishna Consciousness, Inc. v. Eaves, 601 F.2d 809 (5th Cir. 1979) (airports); International Soc'y for Krishna Consciousness, Inc. v. Rochford, 585 F.2d 263 (7th Cir. 1978) (airports); Wolin v. Port of New York Auth., 392 F.2d 83 (2d Cir. 1968), *cert. denied*, 393 U.S. 940 (municipal bus terminal); International Soc'y for Krishna Consciousness, Inc. v. McAvey, 450 F. Supp. 1265 (S.D.N.Y. 1978) (World Trade Center); International Soc'y for Krishna Consciousness, Inc. v. Hays, 438 F. Supp. 1077 (S.D. Fla. 1977) (highway rest stops). This list is by no means exhaustive.